IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division

Franklin Benjamin Reyes, *Petitioner*, v. Kristi Noem, Secretary, U.S. Department of Homeland Security, Pamela Bondi, Attorney General, Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement, Miguel Vergara, Field Office Director, U.S. Immigration and Customs Enforcement, Harlingen Field Office, Warden, Port Isabel Service Detention Center, *Respondents*.	Civ. Action No. 1:25-cv-344

PETITION FOR WRIT OF HABEAS CORPUS

1. In June 2024, an immigration judge found that Petitioner Franklin Reyes would more likely than not be tortured if he were returned to his native El Salvador, either by or at the acquiescence of the government of that country. The immigration judge therefore granted Petitioner deferral of removal under the Convention Against Torture (CAT), thus prohibiting the U.S. government from removing him to El Salvador. In October 2024, Petitioner was then released from custody on an Order of Supervision. Now, over a year later, the government has re-detained Petitioner, and threatens to deport him to Mexico imminently without any Immigration Judge

reviewing his claimed fear of torture, persecution, and refoulement to El Salvador.

JURISDICTION AND VENUE

2. This action arises under the Immigration and Nationality Act of 1952 ("INA"), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

3. Venue lies in this District because Petitioner is currently detained at the Port Isabel Service Detention Center, within the territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

PARTIES

4. Franklin B Reyes, the Petitioner, is a native of El Salvador. He has lived in the United States since 1990. He has a final order of removal to El Salvador, and is currently detained by Respondents at the Port Isabel Service Detention Center in Los Fresnos, Texas.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent Miguel Vergara, Field Office Director of the Harlingen Field Office of

U.S. Immigration and Customs Enforcement, located in Harlingen, TX, is the immediate custodian who is currently holding Petitioner in legal custody. He is sued in his official capacity.

8. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief from removal do so as her designees.

9. Respondent Warden of the Port Isabel Service Detention Center, where Petitioner is currently detained, is the immediate custodian who is currently holding Petitioner in physical custody. He is sued in his official capacity.

10. All government Respondents are sued in their official capacities.

FACTUAL ALLEGATIONS

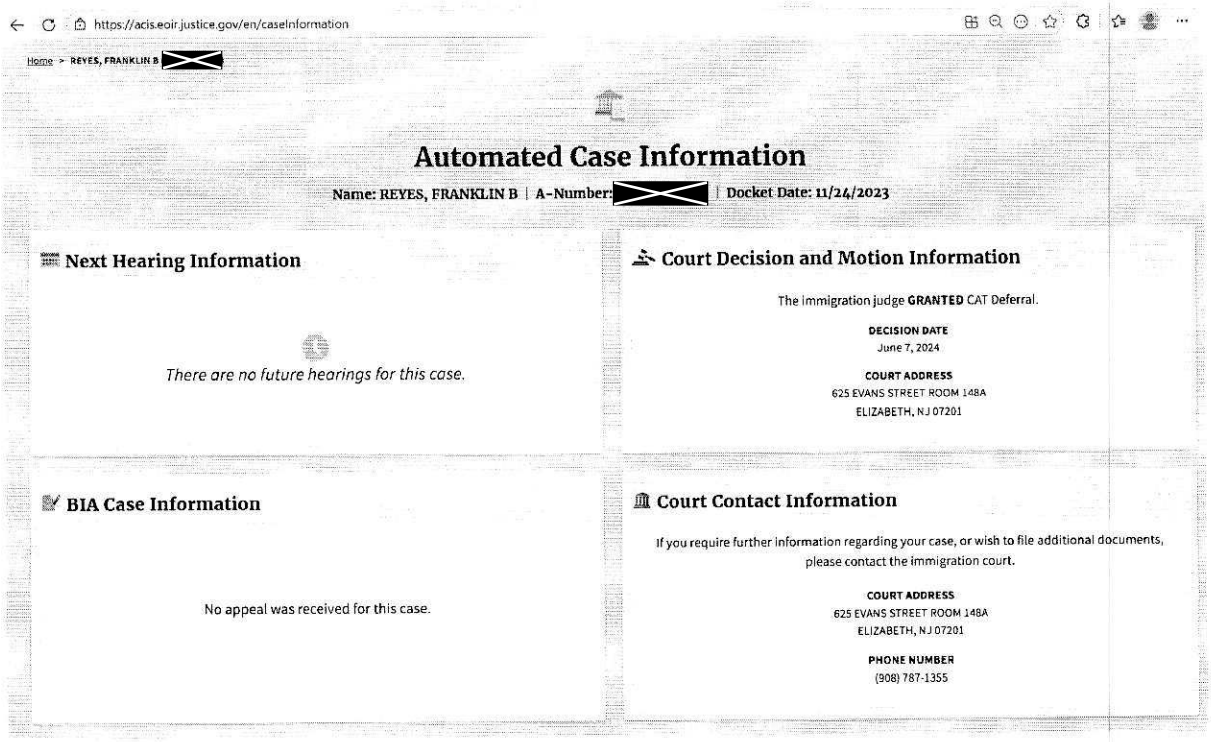
11. Petitioner Franklin Benjamin Reyes was born on [redacted], in El Salvador.

12. Petitioner entered the United States in 1990 when he was just fourteen years old, with his mother. Upon information and belief, Petitioner and his mother were encountered by immigration officials at the time, and released on bond shortly thereafter. They then moved to the Washington, D.C. area, where they hired an immigration attorney to obtain Temporary Protected Status ("TPS"). Petitioner has remained continuously present in the United States since that time and has never departed the country.

13. In 1995, at twenty years old, Petitioner was sentenced to 30 years to life in prison for murder. While detained, Mr. Reyes participated in every educational and rehabilitative program available to him, taking a special interest in manual craft and artwork, and even becoming an instructor in those classes. In November 2022, he became eligible and applied for parole, which was granted. When he was released from federal detention, he was transferred immediately to immigration detention.

14. While in immigration detention at Moshannon Valley Processing Center in Philipsburg, Pennsylvania, Petitioner received paperwork from officials alleging that he was a [redacted] Because of this dangerous false accusation, and because Petitioner was afraid [redacted] Petitioner applied for protection from deportation to El Salvador.

15. On June 7, 2024, an Immigration Judge found that Petitioner was inadmissible and ordered him removed to El Salvador, and simultaneously granted him deferral of removal under the Convention Against Torture. *See* Ex. 1, Order of the Immigration Judge. No appeal was received for this decision. To date, the government has not taken any steps to reopen removal proceedings or rescind the grant of deferral of removal. *See* EOIR Automated Case Information (*available at* https://acis.eoir.justice.gov/ (last visited on December 18, 2025)):



16. Petitioner was released from immigration detention and placed on an order of supervision in October 2024. For approximately thirteen months, he complied fully with all

reporting requirements and never missed a check-in at ERO Washington in Chantilly, Va.

17. On May 2, 2024, USCIS received Petitioner's Form I-918, Petition for U Nonimmigrant Status. *See* Ex. 2, Form I-918 Receipt Notice.

18. After Petitioner was abruptly arrested by ICE officers during his check-in on November 13, 2025, he was held at the Caroline Detention Facility, in Bowling Green, Va. Upon information and belief, Petitioner has been transferred and is now detained by Respondents in the Port Isabel Processing Center, in Los Fresnos, Texas.

19. Mr. Reyes was handed a Notice of Removal to Mexico when he was re-detained, and another identical notice a few weeks later, despite the fact he qualifies for no legal immigration status in Mexico. Because Mr. Reyes fears persecution in Mexico and has no ties to that country, and because he fears that Mexico will promptly re-deport him to El Salvador, he expressed his fear of removal to Mexico and requested a reasonable fear interview. Petitioner, through immigration counsel, submitted a well-supported evidence packet to support his fear claim prior to the interview. *See* Ex. 3, Fear Interview supporting evidence. His reasonable fear interview was held on December 11, 2025, and his immigration counsel was present.

20. On December 16, 2025, Petitioner's immigration counsel followed up with Washington ERO Assistant Field Office Director James Mullan via email after realizing that Mr. Reyes was transferred out of the Caroline Detention Facility, and received a response indicating that "USCIS made a negative fear decision." She requested a copy of the decision document but has received no response thereto. *See* Ex. 4, Emails with AFOD Mullan.

21. On December 18, 2025, Petitioner's immigration counsel requested that an Immigration Judge review the negative fear determination before Respondents remove Petitioner to Mexico. To date, she has not received a response, but Respondents' policy clearly does not

provide for Immigration Judge review of a denied third-country fear interview. *See* Ex. 5, DHS Guidance Regarding Third Country Removals at 2.

22. Petitioner's removal to Mexico is imminent, and Respondents do not intend to refer Petitioner's denied fear interview to an Immigration Judge prior to doing so.

23. Additionally, given Petitioner has no claim to legal immigration status in Mexico, there is a significant possibility Mexico will promptly send him to El Salvador, where it has already been determined that he will face persecution. This chain refoulment would violate the Convention Against Torture just as surely as if Respondents carried out the removal directly to El Salvador.

24. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

LEGAL BACKGROUND

25. The Convention Against Torture ("CAT") prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.17(a). This protection is usually referred to as "CAT deferral of removal." For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT deferral of removal to a noncitizen, the noncitizen bears the burden of proof that he is more likely than not to suffer torture. *Id.*

26. If a noncitizen is granted deferral of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of [deferral] is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

27. However, deferral of removal is a country-specific form of relief. Should the government wish to remove an individual with a grant of deferral of removal to some other country, it must first provide that individual with notice and an opportunity to apply for deferral

of removal as to *that* country as well, if appropriate. *Cf. Guzman Chavez v. Hott*, 940 F.3d 867, 880 (4th Cir. 2019) ("And precisely because [deferral] of removal is country-specific, as the government says, if a noncitizen who has been granted [deferral] as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request [deferral] of removal to that particular country."), *rev'd on other grounds*, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received "ample notice and an opportunity to be heard").

28. The Government acknowledges that an individual with a removal order cannot be removed to a third country, if that individual expresses a fear of removal, without first conducting a fear interview. *See* Ex. 5 (DHS policy on third-country removals) at 2. However, the government's policy on third-country removals does not provide for IJ review of a negative fear determination. *Id.* As multiple courts have held, the lack of IJ review violates due process. *See e.g., Sagastizado v. Noem* 2025 WL 2957002, at *9 (S.D. Tex. Oct. 2, 2025) ("Petitioner has "demonstrated a likelihood of success as to his claim that he cannot be removed to a third country without sufficient notice and a meaningful opportunity to raise a claim, and that Respondents' failure to provide him with review of his negative [fear of removal] determination deprives him of his rights under the Due Process Clause of the Fifth Amendment."); *Cruz Medina v. Noem*, 2025 WL 2841488 (D. Md. Oct. 7, 2025), at *6 ("For the reasons stated below, the *Mathews* factors tip in Petitioner's favor. Petitioner has a substantial likelihood of success on his claim that the Due Process Clause entitles him to review by an immigration judge of the asylum officer's

negative reasonable fear determination—the same procedure that would apply if he were the subject of a reinstated removal order or had been convicted of an aggravated felony.).

29. For individuals with a removal order but who cannot be removed (because there is no country designated to which they can lawfully be removed, or because logistical or practical considerations prevent execution of an otherwise lawfully executable order), 8 U.S.C. §1231(a) permits the government to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A).

30. 8 U.S.C. §1231(a) permits DHS-ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). In this case, pursuant to 8 U.S.C. § 1231(a)(1)(B)(iii), the removal period began when Petitioner's order of removal became final and expired 90 days thereafter.

31. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3).

32. In addition, federal regulations require that where ICE seeks to revoke an order of supervised release pursuant to 8 U.S.C. § 1231(a)(6), the noncitizen is entitled to be "notified of the reasons for revocation of his or her release or parole" by means of a Notice of Revocation of Release, and "[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation

stated in the notification." 8 C.F.R. § 231.4(*l*)(1). The decision to revoke supervised release may only be taken by certain designated high-ranking officials: "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(*l*)(2).

FIRST CLAIM FOR RELIEF:
Violation of 8 U.S.C. § 1231(b)(3) and Convention Against Torture

33. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-24.

34. Respondents threaten to deport Petitioner to Mexico, a country where he fears persecution and torture, and which country he fears will re-deport him to El Salvador where it has already been judicially determined that he is more likely than not to be tortured. Such conduct violates the withholding of removal statute, 8 U.S.C. § 1231(b)(3), as well as the Convention Against Torture and its implementing regulations.

35. In addition, Respondents would deport Petitioner to Mexico, a country where he fears persecution and torture, and which country he fears will re-deport him to El Salvador where it has already been judicially determined that he is more likely than not to be tortured, without an Immigration Judge reviewing his fear of persecution and torture. Such conduct violates the withholding of removal statute, 8 U.S.C. § 1231(b)(3), as well as the Convention Against Torture and its implementing regulations.

SECOND CLAIM FOR RELIEF:
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

36. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-24.

37. Respondents would deport Petitioner to Mexico, a country where he fears persecution and torture, and which country he fears will re-deport him to El Salvador where it has already been judicially determined that he is more likely than not to be tortured, without an Immigration Judge reviewing his fear of persecution and torture. Such conduct violates the Due Process Clause of the U.S. Constitution.

THIRD CAUSE OF ACTION:
Habeas Corpus, 28 U.S.C. § 2241

38. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-24.

39. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.

40. Respondents presently have no legal basis to detain Petitioner in immigration custody, and the writ of habeas corpus should issue.

FOURTH CLAIM FOR RELIEF:
Violation of Regulations/*Accardi* doctrine

41. Petitioner incorporates the foregoing paragraphs 1-34 by reference.

42. Petitioner's supervised release was revoked in violation of the substantive and procedural requirements of 8 C.F.R. § 241.4(*l*), and was revoked by an individual who lacked the authority to do so under that regulation.

43. Section 241.4 is a regulation designed to protect the due process rights of noncitizens like Petitioner and – as this regulation pertains to continued detention, conditions for release, and revocation of release – it directly impacts Petitioner's individual liberty interest.

44. This violation of required procedures also violated Petitioner's due process

rights under the Fifth Amendment to the U.S. Constitution.

45. Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *Nader v. Blair*, 549 F.3d 953, 962 (4th Cir. 2008), *citing United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Several federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Santamaria Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same).

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Preliminarily and permanently enjoining Respondents from removing Petitioner to El Salvador, unless and until his order of CAT Withholding of Removal is terminated, including all appeals;

c) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him Immigration Judge review of his negative fear interview determination;

d) Restoring Petitioner to his prior Order of Supervision, and releasing him from custody thereupon;

e) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody; and

f) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

Date: December 18, 2025

/s/ Simon Sandoval-Moshenberg

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Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this 18th day of December, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

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Respectfully submitted,

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