UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case No. _____

DAVID FERRER LESCAILLE,
Petitioner,

v.

WARDEN, Florida Soft Side South facility, in his official capacity;

KELIE WALKER, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;

KRISTI NOEM, in her official capacity as the Secretary of the U.S. Department of Homeland Security;

TODD M. LYONS, in his official capacity as Senior Official Performing the Duties of Director of U.S. Immigration and Customs Enforcement; and

PAMELA BONDI, in her official capacity as Acting Attorney General of the United States.

Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, David Ferrer Lescaille (hereinafter "Mr. Ferrer" or "Petitioner"), is a national of Cuba who has resided in the United States for the past forty-five (45) years. Petitioner first arrived in the United States as part of the Mariel boatlift and were paroled into the United States in 1980. He was either placed in removal proceedings before the Executive Office for

Immigration Review ("EOIR"), or was previously in exclusion proceedings before the legacy-Immigration and Naturalization Service ("INS"), and ordered removed.

2. Following his proceedings, Petitioner was released under Order of Supervision ("OSUP"), after Immigration and Customs Enforcement's ("ICE") made a determination that Petitioner did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)-(h). Petitioner has maintained clean records since being placed under supervision, demonstrating rehabilitation, stability, and full compliance with the laws and requirements of the United States. Once an OSUP has been granted, ICE's own regulations govern when, how, and who can revoke it. *See* 8 C.F.R. §§ 241.4(l), 241.13(i). These regulations provide core procedural protections; they guard against arbitrary revocation by low-level officers and require both notice and an opportunity to be heard. As shown *infra*, for historical and policy reasons embodied in federal regulations, Mariel Cubans have a distinct overlay of procedural protections than those generally available within the regulatory framework for OSUP revocation.

3. On November 12, 2025, Petitioner appeared for his regularly scheduled reporting in compliance with his OSUP. Despite his compliance with ICE requirements, he was taken into custody without explanation and is currently being detained at the Florida Soft Side South facility in Ochopee, Florida, also known as Alligator Alcatraz (hereinafter "Alligator Alcatraz.") During legal visits with the Petitioner, who is seventy years old, the Petitioner was seen to be shackled at the wrists and ankles during his detention.

4. At the time of his arrest, ICE did not explain its reasons for revoking Petitioner's OSUP. Nor did ICE officers ask Petitioner any questions. If ICE had asked questions, as required

by their own regulations, they would have learned that Petitioner was diagnosed with prostate cancer and requires prescribed medication to manage his condition; that Petitioner has complied with ICE's OSUP requirements; and that ICE's prior determination that his removal is not reasonably foreseeable has not materially changed.

5. Respondents violated federal regulations by revoking Petitioner's OSUP under 8 C.F.R. §241.4(l) (governing procedures for OSUP revocation) or, more to the point, under 8 C.F.R. §212.12 (governing the continued detention of Mariel Cubans specifically during removal efforts or parole revocation.) Petitioner never violated the terms of his supervision, and the conditions supporting his release remain unchanged. ICE provided no written explanation, no finding of violation, and no opportunity to respond before canceling his supervision order and taking him into custody, in violation of both agency regulations and his Fifth Amendment rights. Arbitrary or unexplained revocation is unlawful.

6. Notably, the Petitioner's detention highlights a fundamental misapplication of ICE's cited authority. Generic Notices of Revocation of Release rely on 8 C.F.R. § 241.4, which governs custody determinations generally. However, 8 C.F.R. § 241.4(b) explicitly excludes Mariel Cubans from its scope. The re-detention, parole, or revocation of parole for Mariel Cubans is instead governed by 8 C.F.R. § 212.12. By relying on § 241.4 rather than following § 212.12, ICE failed to apply the regulatory provisions specifically designed to protect Mariel Cubans, compounding the procedural and due process violations identified above. Even if 8 C.F.R. § 241.4 applied, Respondents did not comply with those regulatory requirements either.

7. Moreover, Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. By disregarding the mandatory procedures of 8

C.F.R. §§ 241.4(b)(2), 241.13, 212.12, ICE's detention is procedurally defective and therefore unlawful.

8. Lastly, Petitioner is being detained at Alligator Alcatraz without legal authority. Respondents have elsewhere claimed that Florida is detaining people at the facility pursuant to the 287(g) program, codified at 8 U.S.C. §1357(g). But Section 1357(g) does not provide any authority for state policy to conduct large-scale detention operations, and has never before been used for that purpose. What is more, Respondents have no valid contract or inter-governmental services agreement authorizing ICE to delegate the housing and care of immigrant detainees to a Florida state agency.

9. Petitioner is of advanced age and has strong family ties in the United States, including long-term partner, two children and five grandchildren. Petitioner was diagnosed with prostate cancer and requires prescribed medication to manage his condition. Petitioner spent the Christmas holiday shackled in the middle of the Everglades, away from his family. Amnesty International[1] has documented systemic abuses at the site of Petitioner's confinement, a state-run facility facing mounting criticism for human rights violations, including torture and other inhumane conditions, *inter alia*.

CUSTODY

10. Petitioner satisfies the "in custody" requirement for habeas review because he is currently being physically detained by ICE-ERO at Alligator Alcatraz in Ochopee, Florida.

JURISDICTION

[1] Amnesty Int'l, *Torture and Enforced Disappearances in the Sunshine State: Human Rights Violations at "Alligator Alcatraz" and Krome in Florida* (Dec. 4, 2025), https://www.amnestyusa.org/wp-content/uploads/2025/12/Torture-and-Enforced-Disappearances-in-the-Sunshine-State-Human-Rights-Violations-at-Alligator-Alcatraz-and-Krome-in-Florida.pdf.

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

12. Furthermore, 28 U.S.C. §2241 authorizes district courts to grant writs of habeas corpus to individuals "in custody in violation of the Constitution or laws or treaties of the United States." federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of his detention; as well as claims by noncitizens seeking to protect his due process rights. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840-41 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. at 687. Petitioner is currently detained by U.S. Immigration and Customs Enforcement ("ICE") within this judicial district, satisfying the "in custody" requirement at the time of filing. See *Zadvydas*; *Demore*.

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

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

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

15. Interpreting §1252(g) as barring judicial review of these claims risks conflicting with the Supreme Court's instruction that § 1252(g) is not a broad jurisdictional limitation on "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999); *see also Grigorian v. U.S. Atty. Gen.*, No. 1:25-cv-22914 (S.D. Fla. Sept. 9, 2025). Indeed, the Supreme Court has emphasized that 28 U.S.C. § 2241 provides federal courts with jurisdiction to consider challenges to the lawfulness of immigration-related detention. *Zadvydas*, 533 U.S. at 687.

VENUE

16. Venue is proper because Petitioner is detained in ICE custody at Florida Soft Side South in Ochopee, Florida, within the geographical confines of the Middle District of Florida. *See* 28 U.S.C. § 1391(e)(1)(B), 28 U.S.C. § 1391(e)(1)(C); 28 U.S.C. §2241(d).

PARTIES

17. David Ferrer Lescaille is a citizen of Cuba who entered the U.S. during the Mariel boatlift in 1980. He is currently detained at Alligator Alcatraz. Despite complying with his order of supervision, he was arbitrarily taken into custody in November 2025 at his last ICE check-in.

18. Respondent Pamela Bondi is the Attorney General for the United States Justice Department. Ms. Bondi is the official ultimately responsible with proper enforcement of federal immigration law. She is sued in her official capacity.

19. Respondent, Warden of Florida Soft Side South facility, also known as Alligator Alcatraz, is sued in his official capacity.

20. Respondent Kelie Walker is the Acting Field Office Director for the ICE Miami Office of Enforcement and Removal Operations ("ICE ERO"). In this capacity, she has jurisdiction over Petitioner and is a legal custodian of Petitioner. Ms. Walker is sued in her official capacity, as well as any other individual officially occupying the office of Miami ICE Field Office Director subsequent to her departure from that office.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), the arm of the U.S. government responsible for enforcement of immigration laws. ICE is a subdivision of DHS. Ms. Noem is the ultimate legal custodian of Petitioner. Ms. Noem is sued in her official capacity.

FACTUAL AND PROCEDURAL HISTORY

22. Petitioner is a national of Cuba who has resided in the United States for the past forty-five (45) years. Petitioner first arrived in the United States around April 29, 1980 as part of the Mariel boatlift and is considered to have been admitted as a refugee. On October 2, 2003, the immigration judge issued a removal order due to his underlying criminal record. See Exh. "A," Mr. Ferrer's Automated Case Information System Results, showing the Petitioner was ordered removed on October 2, 2003, at the Miami Immigration Court.

23. Following those removal proceedings, Mr. Ferrer was released under an Order of Supervision on December 3, 2013, under which he has complied fully with all conditions imposed by immigration authorities. See Exh. "B," Mr. Ferrer's Order of Supervision dated December 3, 2013. Since 2013, Mr. Ferrer has maintained a completely clean criminal record, demonstrating rehabilitation, stability, and full compliance with the laws and requirements of the United States.

24. On November 12, 2025, Mr. Ferrer appeared for his regularly scheduled reporting in compliance with his Order of Supervision. Despite his full compliance with ICE's requirements, he was taken into custody without explanation and is currently being detained at Florida South Soft Side in Ochopee, Florida.

25. Upon information, knowledge, and belief, Mr. Ferrer received a document titled "Notice of Revocation of Release." The notice is not in Mr. Ferrer's possession, as it was retained by ICE. The notice cited ICE's authority pursuant to 8 C.F.R. §§ 241.4, 241.13 and stated that Mr. Ferrer is entitled to a prompt informal interview at which he may respond and submit evidence demonstrating that his removal is unlikely. The notice further indicated that, if release is not granted following the interview, Mr. Ferrer will receive notification of a subsequent custody review scheduled to occur three months from the date of the notice.

26. In addition, Mr. Ferrer received a document dated December 8, 2025, and titled "Notice of Removal," which indicated that ICE intends to remove him to Mexico.

27. In detaining Mr. Ferrer, ICE violated federal regulations and due process by revoking his Order of Supervision in contravention of 8 C.F.R. §§ 241.4, 212.12, *inter alia*. Mr. Ferrer has not violated the terms of his supervision, and the conditions supporting Mr. Ferrer's release on supervision have not changed. Thus, any subsequent detention by ICE was and is unlawful.

28. Since receiving his order of supervision, Mr. Ferrer has complied with the requirements of his Order of Supervision, including regular reporting to ICE. He has been a productive member of American society. He has been lawfully employed pursuant to his government issued employment authorization. Had Mr. Ferrer been provided with an interview as required by law, he would have offered evidence of his medical needs, his compliance with the

OSUP requirements, and the lack of changed circumstances since his OSUP was put in place. In fact, the relationship between the U.S. and Cuba, as has been widely reported on international news, has only gotten worse.

29. Mr. Ferrer has strong family ties in the United States, including long-term partner, two children and five grandchildren. He has been diagnosed with prostate cancer and requires prescribed medication to manage his condition. This serious illness necessitates regular medical care and careful monitoring, with routine check-ins every two to three months, which he has not had access to while detained. The limited and inconsistent access to necessary medications in detention poses a serious and immediate threat to his health and life.

Violations of Due Process, Federal Statutes and Regulations, and the *Accardi* Doctrine

30. Petitioner entered the United States as part of the 1980 Mariel boatlift, a unique historical event that has long shaped the United States' repatriation policies toward Cuba. Petitioner was previously released on an OSUP after the government made a determination that each Petitioner did not present a danger to the community, did not present a flight risk, and/or was not likely to be removed in the reasonably foreseeable future. The conditions of Cuba have not changed so as to undermine the basis of Petitioner's order of supervision and warrant his detention. In fact, the relationship between the U.S. and Cuba, as has been widely reported on international news, has only gotten worse.

31. For decades, the U.S. government has recognized the practical and diplomatic barriers to returning Mariel Cubans, particularly those like Petitioner who Cuba has never agreed to accept.[3] These longstanding barriers remain firmly in place today. Indeed, U.S.–Cuba relations

[3] See Central Intelligence Agency, *Cuban Excludables* (Discussion Paper, declassified and approved for release on April 18, 2011), CIA-RDP84B00049R000701760003-3 (internal CIA document noting that Cuba "refused to accept the unconditional return of any Cuban found excludable under U.S. law," which underscores diplomatic intransigence).

have deteriorated significantly in recent years, resulting in reduced diplomatic engagement, limited consular functions, and repeated public reporting that repatriation negotiations between the two governments have stalled.[4] The Cuban government continues to reject or fail to issue travel documents for Mariel-era individuals, and the United States has not secured any new agreements that would make removals to Cuba more likely.[5] The worsening bilateral relationship, combined with Cuba's ongoing refusal to accept certain nationals, including Mariel entrants, means there is no foreseeable prospect that Cuba would accept Petitioner now or in the reasonably foreseeable future.

32. Accordingly, the factual basis underlying Petitioner's original release under an Order of Supervision has not changed. If anything, the current geopolitical circumstances make removal even less likely than at the time his Order of Supervision were issued.

33. In addition, no Petitioner received a prompt informal interview regarding ICE's decision to revoke his OSUP and redetain him, either when he was being re-detained or soon thereafter. Nor was any Petitioner given the opportunity at any point to submit any evidence or information showing that there is no significant likelihood of removal in the reasonably foreseeable future, or that he had not violated his order of supervision.

34. To detain Petitioner indefinitely without any previous identification and notification of a third country, a hearing on that third country, a change in country conditions, or

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[4] See Johana Tablada, *Cuba Tried to Improve Its Relations with the U.S. by Cooperating with Deportation Flights. It Didn't Work.*, Politico (June 2, 2025), https://www.politico.com/news/2025/06/02/cuba-us-relations-deportation-flights-johana-tablada-00381355 (reporting Cuban official's statement that bilateral relations "are now 'at zero'"); Reuters, *Trump Administration Yet to Talk to Cuba over Migration, Foreign Vice Minister Says* (Mar. 12, 2025), https://www.reuters.com/world/americas/trump-administration-yet-talk-cuba-over-migration-foreign-vice-minister-says-2025-03-12/ (noting Cuba has received no new U.S. request for repatriation talks and that mass removals were "not contemplated" by prior agreements).

[5] See *supra* note 3.

a violation of his Order of Supervision is an arbitrary and unlawful detention that violates Petitioner's constitutional rights.

35. Moreover, Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. ICE may release a noncitizen from detention after the removal period, subject to certain conditions, on an OSUP. 8 U.S.C. § 1231(a)(1)(A). DHS has promulgated two generally applicable regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, that govern when a noncitizen may be released on an OSUP and when that release may be revoked. Section 241.4 provides generic requirements governing the use of OSUPs. Section 241.13 applies specifically when OSUPs are used or revoked because there has been a change in the likelihood of the noncitizen's removal in the reasonably foreseeable future. There is a third regulation, 8 C.F.R. § 212.12, that governs the parole, revocation of parole or detention of a Mariel Cuban pending his or her attempted removal from the United States. Critically, by disregarding the mandatory referral of Mariel Cubans under 8 C.F.R. §§ 241.4(b)(2), 212.12 to "Cuban Review Panels," Petitioner's detention is fatally defective and therefore unlawful.

36. Finally, Petitioner is being detained at Alligator Alcatraz without legal authority. Federal law does not allow DHS to delegate detention authority to entities outside of any process or framework devised or even contemplated by Congress. Yet the state agencies that operate the facility have no authority under federal law to detain non-citizens pending removal proceedings. Federal law places that responsibility with DHS. And unlike every other immigration detention facility in the country prior to this one, DHS has not signed any contract or Intergovernmental Services Agreement (IGSA) for Alligator Alcatraz. Thus, if Petitioner is not released outright, they must at minimum be released from this facility.

37. Release from Alligator Alcatraz is critical given the alarming conditions present there. Amnesty International has documented a number of egregious conditions at Alligator Alcatraz, including widespread shackling and limited access to medical care, among many others violations of human rights. These are the conditions Petitioner is experiencing:

> Amnesty International's research concludes that people arbitrarily detained in 'Alligator Alcatraz' are being held in inhuman and unsanitary conditions including overflowing toilets with fecal matter seeping into where people are sleeping, limited access to showers, exposure to insects without protective measures, lights on 24 hours a day, poor quality food and water, and lack of privacy. People interviewed shared that access to medical care is inconsistent, inadequate, or denied altogether, placing individuals at serious risk of both physical and mental harm. People reported being always shackled when they were outside their cage. Other treatment people have endured amounts to torture, including being put in the 'box', described as a 2x2 foot cage-like structure people are put in as punishment – sometimes for hours at a time exposed to the elements with hardly any water – with their feet attached to restraints on the ground.
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> *Amnesty Int'l, USA*: Torture and Enforced Disappearances in the Sunshine State, *supra* note 1.

STATEMENT OF LAW

38. The Due Process Clause of the Fifth Amendment states that "[n]o person shall be ... deprived of life, liberty, or property without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lie at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. This applies to everyone in this country, including aliens. *Id.* at 693 ("[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful [or] unlawful …."); *Reno v. Florida*, 507 U.S. 292, 306 (1993) ("the Fifth Amendment entitles aliens to due process of law in deportation proceedings").

39. Pursuant to 8 C.F.R. § 212.12(a), Petitioner's continued detention is governed by the procedures set forth in that section for Mariel Cubans (defined as Cubans "who last came to the United States between April 15, 1980, and October 20, 1980") who are detained "pending his

or her return to Cuba or to another country." The authority to grant, deny, or revoke parole is discretionary but subject to strong procedural limitations, including interviews before a "Cuban Review Panel" in which regulatory criteria regarding dangerousness and family ties, *inter alia*, are applied before entering a decision to release a Mariel Cuban or continue detention. § 212.12(d)-(h).

40. While § 212.12 vests discretion in Cuban Review Panels to review parole decisions, that discretion is not unlimited. It requires that decisions to continue detention be accompanied by a brief statement of reasons, as outlined in §212.12(b)(1), and that detainees be provided a copy of the decision translated into Spanish. Additionally, the regulation establishes review procedures through the Cuban Review Plan outlined in § 212.12(d), including either record review or personal interview, consideration of relevant factors such as risk of violence, ties to the United States, likelihood of complying with parole conditions, and issuance of written recommendations. Upon information, knowledge, and belief, Respondents have not complied with any of these regulatory requirements.

41. What is more, Respondents have also failed to provide Petitioner with notice of the reasons for his continued detention or revocation of his OSUP as required by 8 C.F.R. §241.4(l) or §241.13. Respondents have not afforded Petitioner a meaningful opportunity to respond to these reasons. Arbitrary or unexplained revocation, especially without identifying a third country for removal, violates both agency regulations and due process protections under the Fifth Amendment. *See Castaneda v. Souza*, 810 F.3d 15, 43 (1st Cir. 2015) (en banc) (recognizing liberty interest in avoiding arbitrary immigration detention); *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011) (recognizing procedural due process rights in prolonged detention under § 241).

42. Petitioner was suddenly and without explanation detained after years of full compliance with his OSUP. There was no notice of alleged violations, no opportunity to rebut the government's reasoning, and no indication that any viable removal country had been identified. The revocation of his OSUP and/or his subsequent detention without formal revocation of his OSUP was therefore unreasonable, arbitrary, and unconstitutional.

43. As a Mariel entrant, Petitioner belongs to a class of Cuban nationals whose removal has historically been severely restricted due to Cuba's longstanding and continuing refusal to accept the return of many individuals who arrived during the 1980 Mariel boatlift. The United States has repeatedly acknowledged that Cuba will not issue travel documents for many Mariel Cubans, including individuals in situations identical to Petitioner. In the absence of an accepting country, the U.S. government cannot lawfully detain Petitioner on the basis of any new justification.

44. Detaining Mariel Cubans, like Petitioner, at an ICE check-in, without prior notice, without identifying any parole or supervision violation, and without providing an opportunity to contest the revocation, constitutes the very sort of arbitrary governmental action that violates due process. Courts repeatedly hold that custody cannot be re-imposed without procedural safeguards, especially where the person has complied with all conditions and is living in the community. See *Morrissey v. Brewer*, 408 U.S. 471 (1972) (recognizing that a parolee's conditional liberty is a protected liberty interest and may not be terminated without orderly procedural safeguards). Thus, revoking an Order of Supervision with no violation, no notice, and no hearing is a clear violation of the Fifth Amendment.

45. ICE's actions violate the *Accardi* doctrine, which requires agencies to follow their own binding regulations. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268

(1954). *Accardi* prohibits the Respondents from disregarding mandatory procedures governing OSUP revocations.

46. The regulations governing the custody and review of Mariel Cubans, 8 C.F.R. § 212.12, and the general OSUP revocation procedures, 8 C.F.R. §§241.4(l), 241.13, create enforceable rules that Respondents must follow before re-initiating detention, or attempting removal. Respondents have ignored these rules entirely.

47. None of the conditions are met for OSUP revocation in Petitioner's cases such that Respondents cannot legally detain him at this juncture. Detaining a fully compliant Mariel Cuban at a check-in with no reason provided is directly contrary to the government's own binding regulations. Respondents' failure to comply with these mandatory procedures renders its actions arbitrary, capricious, and unlawful.

48. As the Southern District Court of Florida explained in *Grigorian* regarding the revocation of an Order of Supervision and the requirement for a meaningful informal interview, "[t]he failure to provide Petitioner with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause. This compels Petitioner's release." *Grigorian*, No. 1:25-cv-22914, at *18-19.

49. The *Grigorian* court continued to explain its power to ensure that such discretion is exercised in accordance with regulations and constitutional due process requirements:

> To be clear, the Court is not 'reviewing and reversing the manner in which discretion was exercised.' *Accardi*, 347 U.S. at 268. As the Court has already explained, the Government may revoke Petitioner's OSUP for any of the reasons stated in § 241.4(l)(2). But they may not detain him without offering a meaningful opportunity to contest those reasons. After all, 'if men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.' Niz-

> Chavez, 593 U.S. at 172. The Court therefore finds that Petitioner must be released from custody. *Id* at. *20.

50. Numerous courts throughout the nation have reached similar conclusions. See, e.g., *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7-9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25- CV-00182-MJT, 2025 WL 2491782, at *3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25- cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Wing Nuen Liu v. Carter*, Case No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

51. Here, Petitioner's final order of removal has remained unexecuted for decades, and no immigration judge has ever designated a third country of removal. No alternative country has been identified by the government because no acceptable, alternative country can be identified. As Mariel entrants, Petitioner is a part of a group of Cuban nationals whom Cuba has historically refused to accept, and DHS has offered no evidence that this long-standing barrier has changed. DHS has failed to reopen Petitioner's removal proceedings and has failed to obtain a new order of removal with a proper third country designated. ICE and DHS have failed to provide Petitioner or his counsel with any advance notice of a third country of removal and has failed to provide Petitioner and his counsel with the requisite due process to ensure he is not tortured in any third country that they may be potentially removed to.

52. The revocation of Petitioner's OSUP and ongoing detention are a stark violation of constitutional protections under the Fifth Amendment and Petitioner's rights to due process. Petitioner have lived at liberty in the United States for decades and are, at a minimum, entitled to

notice of any purported country of removal and a meaningful opportunity to be heard regarding the government's asserted ability to remove him there.[6] Therefore, ICE's failure to provide the required procedures violates the *Accardi* doctrine. *Grigorian* explained:

> [T]he faint promise of an opportunity to be heard three months down the line [does not] satisfy what due process requires. See 8 C.F.R. § 241.4(l)(3) (providing that the formal review process will begin "within approximately three months" only "if the alien is not released from custody following the informal interview"). If the eventual promise of a formal review were enough to cure a due process violation, ICE would be able to hold individuals for approximately three months after revocation with no meaningful opportunity to be heard.
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> *Grigorian*, No. 1:25-cv-22914, at *18.

53. Analogous to *Grigorian*, Respondents' actions do not adhere to ICE's own regulations and fall short of the fundamental requirements of due process. Due process under the Fifth Amendment requires reasonable notice and an opportunity to be heard. The right to be heard before being condemned to suffer grievous loss of any kind is a principle basic to society. *Mathews v. Eldrige,* 424 U.S. 319 (1976). Petitioner has been in the United States for over forty-five (45) years. To now detain Petitioner with no notice or explanation and attempt to deport him to an unknown and unidentified third country where it has not been determined that Petitioner will be safe is arbitrary, unlawful, and a violation of Petitioner's constitutional and human rights.

54. Lastly, DHS may detain individuals only pursuant to valid statutory or regulatory authority. Detention without such authority is ultra vires and unlawful. *See Youngberg v. Romeo*, 457 U.S. 307, 316-17 (1982) (holding that when the state confines an individual, it must do so pursuant to lawful authority and provide constitutionally adequate protections for personal liberty

[6] The Supreme Court's recent decision in Dep't of Homeland Sec. v. D.V.D., 602 U.S. (2025) (granting stay) does not preclude individual petitions for habeas, it merely precludes the universal injunction on the matter.

and safety). And states cannot participate in immigration enforcement absent permission from Congress. *Arizona v. United States*, 567 U.S. 387, 408 (2012).

55. Federal law is emphatic that DHS itself—either through its employees or contractors—must be the one to detain non-citizens pending removal proceedings or removal. Every statute that provides authority for long-term immigration detention gives that authority to DHS alone. *See* 8 U.S.C. §§ 1225(b)(2)(A), 1226(a), (c), 1231(a)(2)(A) (requiring the "Secretary" or "Attorney General" to carry out all detention).

56. Upon information, knowledge, and belief, the authority Respondents have elsewhere cited for detention at Alligator Alcatraz is 8 U.S.C. §1357(g). Section 1357(g) allows DHS to delegate a limited number of "immigration officer functions" to individual state and local officers who complete training and certification and receive federal supervision, and are also know as "287(g) agreements" under the Immigration and Nationality Act and federal regulations. 8 U.S.C. § 1357(g)(1)-(5); 8 C.F.R. §287.1.

57. But Section 1357(g) has never been used before as the authority to operate a detention facility. Nor can it be used in this way.

58. Section 1357(g) does not provide authority for Petitioner's detention at this facility for at least two reasons.

59. First, the statute does not allow local police officers to be assigned authority to conduct large-scale and long-term detention operations. It only allows them to be delegated "a function of an immigration officer." 8 U.S.C. §1357(g)(1). The broader Section 1357 statute provides these "[p]owers of immigration officers." *Id.* §1357 (title); *see El Cenizo v. Texas*, 890 F.3d 164, 177 (5th Cir. 2018). And none of the statute's immigration-officer functions include detention during removal proceedings. Rather, the functions of individual immigration officers

are policing activities, like interrogations and arrests of individual noncitizens. *See* 8 U.S.C. § 1357(a)(1) (interrogation), (a)(2)-(5) (arrests), (c) (search), (f) (taking fingerprints).

60. In other words, nothing in Section 1357 or any other statute lists detention operations as an "immigration officer function" that could be delegated to state officials under Section 1357(g). Because immigration detention is a complex and multifaceted undertaking, the INA assigns detention operations to DHS as an agency. For instance, it provides that "*the Attorney General*" may detain noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added); *see id.* § 1225(b)(2)(A) (similar); *id.* § 1231(a)(2)(A) (similar). Indeed, *every* statute that mentions the authority to manage detention operations assigns that power to DHS as an agency, not to individual immigration officers. *See* 8 U.S.C. §§ 1103(a)(10), 1231(g).

61. Nevertheless, ICE Deputy Executive Associate Director Thomas Giles has stated in a sworn declaration in *Friends of the Everglades, Inc. v. Noem*, 1:25-cv-22896 (S.D.Fla July 2, 2025) (D.E. 21-1):

> "ICE is not providing any funding for the construction of the TNT Detention Facility [Alligator Alcatraz]. The State of Florida is responsible for the funding and construction of the facility. ICE's role concerning the development of the TNT Detention Facility has been limited to touring the facility to ensure compliance with ICE detention standards, and meeting with officials from the State of Florida to discuss operational matters." *Id.*

62. Giles further states:

> "The ultimate decision of who to detain at the TNT Detention Facility belongs to Florida.... If Florida decides to detain any illegal aliens at the TNT Detention Facility, they would do so under the authority delegated pursuant to section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g). Many Florida entities have entered 287(g) agreements since President Trump took office, including the Florida National Guard and several Florida law enforcement entities. Those agreements, including the date they

> were signed, are available on ICE's website… The agreements generally authorize those entities to detain aliens under the immigration laws. ICE's understanding is that Florida intends to operate its 287(g) facilities under those existing agreements." *id.*

63. Section 1357's implementing regulations confirm that detention during removal proceedings is not an "immigration officer function" that could be delegated under Section 1357(g). Those regulations list the powers of "immigration officers." 8 C.F.R. § 287.5 (title), 287.8. And *none* of them include immigration detention operations. *See, e.g.*, 8 C.F.R. § 287.5(a) (interrogation), (c), (e) (arrest), (d) (search). The only detention-related activities they include are policing activities like the other immigration-officer functions: the authority to "take and maintain custody of and transport any person who has been arrested by an immigration officer," 8 C.F.R. § 287.5(c), and the authority to "briefly detain [a] person for questioning," *id.* § 287.8(b)(2).

64. This is why, prior to Alligator Alcatraz, no detention facility ever claimed to operate under state control pursuant to Section 1357(g). The statute does not authorize this detention, so Petitioner must be released from the facility.

65. Second, even if Section 1357(g) did authorize state officers to conduct long-term immigration detention, their detention is being managed and conducted by individuals who have not been deputized under any 287(g) agreement. Upon information, knowledge, and belief, Alligator Alcatraz is run by the Florida Department of Emergency Management (FDEM), which has no 287(g) agreement, and therefore none of its employees are deputized to exercise any immigration officer functions. Furthermore, the facility is almost entirely staffed by *private contractors*, who are not and cannot be deputized under Section 1357(g). The statute only allows authority to be conveyed to "an officer or employee of [a] State or subdivision," 8 U.S.C. § 1357(g)(1), not a private contractor.

66. Because they are not and cannot be deputized, these FDEM officials and private contractors have satisfied *none* of the statute's requirements. They have not "received adequate training" in the complexities of immigration law and procedures. *See* 8 U.S.C. § 1357(g)(2). They have no "written agreement" which lays out the extent and limits of their immigration authority. 8 U.S.C. § 1357(g)(1), (5). And they have no assigned federal official "who is required to supervise and direct" their immigration activities. 8 U.S.C. § 1357(g)(5). These non-deputized individuals cannot exercise 287(g) authority outside the "highly regulated scheme for adopting 287(g) agreements." *El Cenizo*, 890 F.3d at 177; *see Creedle v. Miami-Dade*, 349 F. Supp. 3d 1276, 1302 (S.D. Fla. 2018) (explaining that training and federal supervision are necessary to help deputized officers navigate "the significant complexities involved in enforcing federal immigration law") (quotation marks omitted).

67. In the *Friends of the Everglades* case, Respondents conspicuously declined to identify any particular state officer who was purportedly deputized under Section 1357(g) to detain people at Alligator Alcatraz. *Friends of the Everglades, Inc. v. Noem*, 1:25-cv-22896 (S.D.Fla. July 2, 2025). They simply cited various agencies' 287(g) agreements. *Id.* But the agreements themselves do not convey any authority to anyone. *See Santos v. Frederick County*, 725 F.3d 451, 457, 465 (4th Cir. 2013). They simply provide the framework for individual state officers to be deputized. Yet Defendants have stayed silent on which state officers at Alligator Alcatraz—if any—have actually been deputized. That underscores what Florida has since admitted: The people who are actually managing and conducting detention operations are FDEM officials and private contractors who do not and cannot have any authority under Section 1357(g). This provides an independent reason to order Petitioner released from the facility.

68. Prior to Alligator Alcatraz, facilities operated by state government contractors did so pursuant to Intergovernmental Services Agreements (IGSAs). 8 U.S.C. § 1103(a)(10) (authorizing payments to IGSA facilities including "States and political subdivisions of States"). The IGSA framework provided for ICE's operational control over the detention of aliens in non-federal facilities and is premised on compliance with federal standards.[7]

69. ICE may only house aliens in state or local government facilities if it has either entered into a valid IGSA under MOA guidance; or procured detention space from the LEA using ICE funding, oversight, and contractual authority. Specifically, ICE's February 7, 2025 Memorandum of Agreement (MOA) further clarifies that detention by a local entity requires a formal IGSA:

> "If ICE determines that it is necessary, the LEA shall, to the extent it operates a detention facility or facilities meeting the standards described herein, enter into an Inter-Governmental Service Agreement (IGSA) with ICE, pursuant to which the LEA shall provide, for a fee, detention of incarcerated aliens in LEA facilities, upon the completion of their sentences."[8]

70. No IGSA exists between ICE and Florida authorizing the detention of Petitioner at Alligator Alcatraz. Respondents are detaining Petitioner at a facility over which ICE has no operational control and without any statutory, regulatory, or contractual authorization.

71. Instead, Petitioner is confined in a facility that is entirely operated by state officers and private contractors, and has no IGSA. Alligator Alcatraz has skirted the system devised by Congress and is being run outside federal control without an IGSA, illegally circumventing federal acquisition regulations governing procurement, competitive bidding, and federal compliance and

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[7] ICE, *Intergovernmental Service Agreements Guidance* (Feb. 7, 2025). Last retrieved on Dec. 27, 2025. Available at: https://www.ice.gov/doclib/foia/igsas.pdf

[8] *See* Memorandum of Agreement (Feb. 7, 2025). Last retrieved on Dec. 27, 2025. Available at: https://www.ice.gov/doclib/foia/igsas.pdf.

monitoring of the contractor's obligations and deliverables. *See generally* 48 CFR §1.101 (Federal Acquisition Regulation.) Because it lacks an IGSA, unlike every other facility, Alligator Alcatraz has no contractual obligation to follow a particular set of ICE Detention Standards, and it lacks the contractual oversight mechanisms that come with an IGSA arrangement. As a result, Petitioner and other detainees have faced a range of anomalous and alarming conditions at the facility.

72. Without a valid IGSA or other statutory or contractual authority, DHS lacks the legal power to detain Petitioner in facilities operated by an agency of the State of Florida. Detention under these circumstances is ultra vires, arbitrary, and violates Petitioner's constitutional and statutory rights. *See Accardi*, 347 U.S. at 268; *Zadvydas*, 533 U.S. at 699-700; *Youngberg*, 457 U.S. at 316-17.

73. As a result of this illegally-constituted detention center, Petitioner face numerous forms of irreparable harm from being illegally detained at Alligator Alcatraz. Unlawful detention is a paradigmatic form of irreparable harm. *See United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) (holding that "unnecessary deprivation of liberty clearly constitutes irreparable harm"). Their irreparable injury is "neither remote nor speculative, but actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176-77 (11th Cir. 2000).

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
Substantive Due Process

74. The Supreme Court has found that the "Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 682.

75. Petitioner, a Mariel Cuban who has resided in the United States for more than four decades was seized at a routine ICE check-in despite having committed no violation of his supervision conditions and despite having been fully compliant with every reporting requirement. ICE provided no notice, no allegation of misconduct, and no explanation for the sudden revocation of his OSUP status. Such unexamined and indefinite detention bears no reasonable relation to ensuring appearance at removal proceedings or protecting public safety.

76. Immigration detention must "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. Arbitrarily cancelling Petitioner's supervision and re-detaining him, without identifying any statutory or regulatory purpose for doing so, bears no reasonable relation to public safety, to ensuring attendance at proceedings, or to any regulatory goal. Such unexplained and sudden re-detention transforms a civil regulatory scheme into punitive confinement, which the Fifth Amendment forbids. *Zadvydas*, 533 U.S. at 690.

77. By categorically denying Petitioner the opportunity for individualized review, Respondents have transformed a civil regulatory scheme into punitive confinement in violation of substantive due process. The Fifth Amendment forbids detention that is arbitrary, excessive in relation to its purpose, or unsupported by individualized justification. *See Zadvydas*, 533 U.S. at 690. Because the ICE failed to follow mandatory parole-revocation standards in § 212.12(h), Petitioner's detention violates his due process rights.

COUNT II
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
Procedural Due Process

78. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate whether adjudicatory procedures sufficiently protect individuals' due process rights. The Due Process

Clause requires, at a minimum, notice and a meaningful opportunity to be heard before an individual may be deprived of liberty.

79. Petitioner received neither. ICE revoked his OSUP and detained him at routine ICE check-in without prior notice, without alleging any violation, without providing a written explanation, and without affording Petitioner an opportunity to contest the revocation. This constitutes a denial of the most basic procedural protections required by the Fifth Amendment and described in *Mathews*.

80. ICE failed to comply with the mandatory grounds for revocation set forth in 8 C.F.R. § 8 C.F.R. §241.4, 212.12. None of these grounds applied to Petitioner, who were fully compliant with all terms of supervision. If none of these circumstances exist, ICE has no legal authority under the regulation to revoke parole or supervision. The agency's disregard of these mandatory prerequisites further underscores the absence of any lawful basis for re-detention and heightens the procedural due process violation.

81. Respondents deprived Petitioner of the protections applicable to the custody and continued detention of Mariel Cubans, 8 C.F.R. § 212.12, as well as the OSUP revocation procedures, 8 C.F.R. §241.13, that ICE must follow before re-initiating detention, or attempting removal.

COUNT III
VIOLATION OF THE ACCARDI DOCTRINE AND 8 C.F.R. §§ 212.12 241.4, 241.13
No Regulatory Authority to Detain

82. Under the *Accardi* doctrine, agencies must follow their own binding regulations, particularly when those regulations protect individual liberty interests. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

83. 8 C.F.R. § 212.12(h) provides grounds for revoking parole, supervised release or for justifying continued detention of Mariel Cubans pending his return to Cuba or a third country.

84. Respondents have also violated the notice, interview, and opportunity to respond requirements of 8 C.F.R. §241.4(l).

85. Respondents disregarded every requirement of both §§212.12, 241.4, and 241.13. They provided Petitioner no written explanation, no finding of violation, and no procedural steps whatsoever before cancelling his supervision and taking him into custody. Under the *Accardi* doctrine, this failure to follow binding regulations renders the agency action unlawful. ICE failed to comply with the mandatory grounds for revocation set forth in 8 C.F.R. § 212.12(h). None of these grounds applied to Petitioner, who were fully compliant with all terms of supervision. If none of these circumstances exist, ICE has no legal authority under the regulation to revoke parole or supervision. The agency's disregard of these mandatory prerequisites further underscores the absence of any lawful basis for re-detention and heightens the procedural due process violation.

86. Respondents deprived Petitioner both of the protections applicable to the custody and continued detention of Mariel Cubans, 8 C.F.R. § 212.12, and the generic OSUP revocation procedures, *see* 8 C.F.R. §241.4(l) and 241.13, that ICE must follow before re-initiating detention or attempting removal.

87. Because Respondents lacked the regulatory authority to revoke Petitioner supervision or re-detain him, their custody of Petitioner is ultra vires and must be vacated.

COUNT IV
VIOLATION OF SECTION 1357(g)
No Authority to Detain

88. Respondents may only detain individuals pursuant to a valid statutory or contractual basis. Detaining individuals without such authority is ultra vires and violates Petitioner's constitutional and statutory rights.

89. As explained above, there is no authority under federal law for state officers to independently detain Petitioner at Alligator Alcatraz.

90. First, Section 1357(g) provides no authority for state officers to independently detain immigrants during removal proceedings.

91. And even if it did, the facility is managed and staffed by state officials and private contractors who are not and cannot be deputized under Section 1357(g), and who have not completed any of the statute's training, certification, or supervision requirements.

92. Petitioner's detention at this facility therefore violates federal law for at least two independent reasons.

COUNT IV
VIOLATION OF SECTION 1103(a)(11)(A)
No Authority to Detain

93. Petitioner's detention represents an illegal and unaccountable delegation of detention authority outside the constraints of 8 U.S.C. § 1103(a)(11)(A), which provides for formal contracts allowing federal and state or local governments to provide for the care and housing of detained immigrants pending removal proceedings or removal efforts. These contracts are known as Inter-Governmental Services Agreements (IGSAs.)

94. Other than IGSAs, Congress has not enacted any alternate framework for the federal government to coordinate with States to provide for the detention of immigrants pending his removal proceedings or pending efforts to execute removal orders.

95. Since no IGSA exists governing Alligator Alcatraz, Petitioner's months-long detention at this facility is *ultra vires* and unlawful.

96. Respondents have skirted the statutory process in 1102(a)(11) by delegating operational control to an agency of the State of Florida without an IGSA, illegally circumventing federal regulations governing procurement, competitive bidding for government contracts, and federal oversight and compliance. *See generally* 48 CFR §1.101 (Federal Acquisition Regulation.)

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court grant the following relief:

a. Order that the Petitioner be released from custody immediately;

b. In the alternative, order the government to provide Petitioner with notice and a hearing where Petitioner can confront and oppose removal to any alternative third country that agrees to accept him, if one is identified;

c. Enjoin the Respondents from re-arresting or re-detaining Petitioner absent full and strict compliance with federal law;

d. Grant an award of attorneys' fees and costs;

e. Grant such other relief as this Court deems just and appropriate.

Respectfully submitted, Dated: January 2, 2026

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner's authorized representative and immigration attorney the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted, Dated January 2, 2026

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