

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION

FRANCISCO PORTELA-MORA,

CASE NO.

Petitioner,

JUDGE:

v.

MAGISTRATE JUDGE:

KRISTI NOEM, Secretary, United States Department of Homeland Security; GARRETT J. RIPA, Field Office Director, United States Immigration and Customs Enforcement Miami Field Office, Enforcement and Removal Operations; KEVIN GUTHRIE, Director, Florida Division of Emergency Management; **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT**; PAMELA J. BONDI, Attorney General of the United States; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement.

Respondents.

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**PETITION FOR WRIT OF HABEAS CORPUS**  
**AND ORDER TO SHOW CAUSE**

COMES NOW the Petitioner (“Petitioner”), FRANCISCO PORTELA-MORA, by and through his undersigned counsel, and petitions this Honorable Court to issue a writ of *habeas corpus* to remedy his unlawful detention by

United States Immigration and Customs Enforcement (“ICE”) and in support thereof respectfully alleges as follows:

**CUSTODY**

1. Petitioner is in the custody of Defendant-Respondent (“Respondent”) GARRETT J. RIPA at ICE’s Florida Soft South Side a/k/a “Alligator Alcatraz,” located at 54575 Tamiami Trail East, Ochopee, Collier County, Florida 34141. *See* Exhibit No. 1.

2. Petitioner has been detained by Respondents since approximately December 29, 2025 even though the federal government has no significant likelihood of removing him from the United States.


**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* and Article I, Section 9, Clause. 2 of the U.S. Constitution (“Suspension Clause”), as Petitioner is currently in custody under color of the authority of the United States in violation of the Constitution, laws, or treaties of the United States.

4. Venue for the complaint for injunctive relief is proper under 28 U.S.C. § 1391(e), as Respondents are officers or employees of the United States.

Venue for the habeas action is proper under 28 U.S.C. §§ 2241 *et seq.*, as Respondents exercise control over Petitioner's custody.

### PARTIES

5. Petitioner is a citizen and national of Cuba and has been assigned Alien Registration Number  by the Respondents. He is a resident of Miami-Dade County, Florida.

6. Respondent-Defendants ("Respondents") are government agencies and officials as more fully set forth below.

7. Suit is brought against Respondent KRISTI NOEM in her official capacity as the Secretary of the Department of Homeland Security. In that capacity, she has responsibility for the administration and enforcement of the immigration laws.

8. Suit is brought against Respondent GARRETT J. RIPA in his official capacity as the Field Office Director of the ICE office in Miami, Florida which controls Alligator Alcatraz in Ochopee, Florida. In that capacity, he is the legal custodian of the Petitioner and has the power or ability to produce or release the Petitioner if directed to do so by this Court. *See Masingene v. Martin*, 424 F.Supp.3d 1289 (S.D. Fla. 2020); *C.M. v. Noem*, 796 F.Supp.3d 1198 (S.D. Fla. 2025).

9. Suit is brought against Respondent UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) as it is the agency


responsible for administration of the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et. seq.*, including, but not limited to, the detention and removal of aliens from the United States.

10. Suit is brought against Respondent KEVIN GUTHRIE, in his official capacity as Executive Director of the Florida Division of Emergency Management (FDEM) which controls Alligator Alcatraz in Ochopee, Florida. In that capacity he controls Alligator Alcatraz and is a custodian of Petitioner.

11. Suit is brought against Respondent PAMELA J. BONDI in her official capacity as the Attorney General of the United States. In that capacity she has responsibility for the administration and enforcement of the immigration laws and delegates this responsibility to the Executive Office for Immigration Review (“EOIR”), which is subject to her control and direction. Respondent BONDI is legally responsible for administering the Petitioner’s removal proceedings.

12. Suit is brought against Respondent TODD M. LYONS in his official capacity as the Acting Director of ICE, an agency of the Department of Homeland Security. In that capacity he is responsible for the administration of ICE and the implementation of the immigration laws of the United States.

**STATEMENT OF THE FACTS**

13. Petitioner is a 51 year old male citizen and national of Cuba and has been assigned file number  by the Respondents.

14. On or about 1994, more than 30 years ago, Petitioner was paroled into the United States as Cuban Refugee.

15. As a result of a October 3, 1997 arrest, on or about May 29, 1998 Petitioner was convicted in the Circuit Court in and for Dade County, Florida of Robbery in violation of Fla. Stat. § 812.13(2)(c), Robbery in violation of Fla. Stat. §§ 812.135 & 775.087(1)(b), Aggravated Battery in violation of Fla. Stat. § 784.045(1), Resisting An Officer Without Violence in violation of Fla. Stat. § 843.02, and Burglary of a Dwelling in violation of Fla. Stat. § 810.02. Petitioner was sentenced to a term of three-hundred sixty-four (364) days of incarceration to be served concurrently.

16. As a result of a December 31, 1998 arrest, on or about May 20, 1999 Petitioner was convicted in the Circuit Court in and for Dade County, Florida of Petit Larceny in violation of Fla. Stat. § 812.014.

17. As a result of arrests on June 2, 2001 and June 27, 2001, on or about December 18, 2001 Petitioner was convicted in the Circuit Court in and for Dade County, Florida of Battery of a Law Enforcement Officer in violation of Fla. Stat. §§ 784.07(2)(B) and 784.03, Resisting an Officer with Violence in violation of Fla. Stat. § 843.01, Resisting an Officer without Violence in

violation of Fla. Stat. § 843.02, and Purchasing Cannabis in violation of Fla. Stat. § 893.12(2)(a)(2). Petitioner was sentenced to a term of three-hundred sixty-four (364) days of incarceration to be served concurrently.

18. As a result of an October 22, 2010 arrest, on or about May 7, 2012 Petitioner was convicted in the Circuit Court in and for Dade County, Florida of Burglary of an Unoccupied Structure in violation of Fla. Stat. § 810.02(4)(A) and Possession of Burglary Tools in violation of Fla. Stat. § 810.06 and sentenced to term of probation. On or about May 21, 2013 Petitioner's probation was terminated early.

19. On or about October, 2010, Petitioner was taken into custody by Respondents.

20. On or about December 15, 2010, Petitioner was ordered removed from the United States to Cuba by the Immigration Court in Miami, Florida.

21. After a final removal order is entered, an alien ordered removed is held in custody during a 90-day removal period. If the alien is not removed in those 90 days, the post-removal-period detention statute authorizes further detention or supervised release, subject to administrative review. The post-removal-period detention statute, read in light of the Constitution's demands, implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States, and does not permit indefinite detention. *Zadyvdas v. Davis*, 533 U.S. 678 (2001).

22. Cuba and the United States have had a tumultuous relationship for over five decades. Throughout that time, the Cuban government refused to negotiate with the United States for the return of its citizens. Because of the lack of diplomatic relations, the two nations did not have a repatriation agreement in place and no agreed upon mechanism existed by which the United States could return Cuban citizens to the island nation.

23. Due to Cuba accepting only a limited number of deportees from the United States within an uncertain time frame, the majority of Cubans subject to removal orders are released from immigration detention. They are subsequently placed under an Order of Supervision, which requires them to maintain regular contact with ICE as instructed, i.e. immigration probation.

24. Petitioner was released from custody by ICE and placed on an Order of Supervision and reported as required.

25. Since his release from custody, Petitioner has not engaged in, nor been convicted or, any criminal or recidivist behavior. In fact, Petitioner has a U.S. citizen spouse, two (2) U.S. citizen children and has been gainfully employed.

26. Upon being redetained by ICE on December 29, 2025, ICE failed to provide (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the

reasonable foreseeable future. *See Kong v. United States*, 62 F.4<sup>th</sup> 609, 619-20 (1<sup>st</sup> Cir. 2023); 8 C.F.R. § 241.13(i)(2).

27. Upon being redetained on December 29, 2025, ICE failed to notify the Petitioner of the reasons for the revocation of his release or conduct an interview to afford the Petitioner the opportunity to respond for the reasons for the revocation of his release as required by 8 C.F.R. § 241.13(i)(3).

28. Since Petitioner's last release from custody, ICE has failed to procure travel documents from the Republic of Cuba or effect his removal to Cuba.

29. ICE has no indication that the Government of Cuba has found Petitioner eligible for repatriation.

30. Upon information and belief, ICE has never issued a notice revoking Petitioner's release.

31. Petitioner has not been convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43).

32. Petitioner is not a danger to the community and is not a flight risk.

33. Petitioner is eligible to adjust his status to that of a lawful permanent resident pursuant to section 1 of the Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966), note following 8 U.S.C. § 1255, in

conjunction with a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

34. Petitioner's removal from the United States is not reasonably foreseeable in the immediate future.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

35. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this action.

36. There has been no prior judicial review of this matter.

#### **IRREPARABLE INJURY**

37. Petitioner has suffered, is suffering, and will continue to suffer irreparable injury unless equitable relief is ordered by this Honorable Court. Respondents' conduct is depriving Petitioner of his liberty without providing him due process of law. The deprivation of his liberty is, in and of itself, irreparable harm.

38. Pursuant to 28 U.S.C § 2243, this Court can order the Respondents to file a response within three days, unless they can show cause for additional time. ("The writ or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days is allowed.").

## **LEGAL FRAMEWORK**

### **Due Process Governs Decisions to Revoke an Order of Supervision**

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

40. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

41. “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) (citation modified). “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 (citation modified).

**Statute and Regulation Govern Procedures  
for Revoking an Order of Supervision**

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

43. A non-citizen may only be detained past the 90-day removal period following a removal order if found to be “a risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

44. Even when detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . .” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

45. 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(l)(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).

46. 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(l)(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 intend 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(l)(2). 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 “does not include the authority to detain noncitizens or to revoke orders releasing them” insufficient to grant authority to revoke an order of supervision).

47. Upon revocation of an order of supervision, ICE must give the alien notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

#### **The APA Sets Minimum Standards for Final Agency Action**

48. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

49. 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) (citation modified).

50. ICE’s revocation of an order of supervision is a final agency action subject to this Court’s review.

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

52. 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**

53. 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.”).

54. *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).

55. 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

### COUNT I

#### **(Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process)**

56. Petitioner repeats and realleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

57. When ICE issued Petitioner an order of supervision, it found that s/he is neither a danger to the community nor a flight risk.

58. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order and ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order’s revocation.

59. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

60. 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.

61. Petitioner is being detained for immigration purposes when Respondents know that they cannot effect his prompt removal from the United States in the reasonably foreseeable future, that Petitioner is neither a flight risk nor a danger to the community, and has not violated the terms and/or conditions of his Order of Supervision.

62. Respondents have no permissible basis for depriving Petitioner of his liberty in violation of 8 U.S.C. § 1231(a) as well as their respective implementing regulations. A judicial order requiring Petitioner's release from custody would remedy Respondents' unlawful conduct.

63. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**COUNT II**  
**(Violation of the Fifth Amendment of the U.S. Constitution  
Procedural Due Process)**

64. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

65. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is 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 entail.

66. The first factor, the private interest at issue, 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, favors Petitioner. 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 violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

68. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

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.

70. Petitioner's continued detention violates the Constitution of the United States.

71. Petitioner is being detained for immigration purposes when Respondents know that they cannot effect his prompt removal from the United States, that Petitioner is neither a flight risk nor a danger to the community, and has not violated the terms and/or conditions of his Order of Supervision.

72. Respondents have no permissible basis for depriving Petitioner of his liberty in violation of 8 U.S.C. § 1231(a) as well as their respective implementing regulations. A judicial order requiring Petitioner's release from custody would remedy Respondents' unlawful conduct.

73. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quotations omitted). Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); see also *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Zadvydas*, 533 U.S. at 690. In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

74. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha v. Louisiana*, 504 U.S. 71, 78-80 (1992). Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9<sup>th</sup> Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court must assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community. *Zadvydas*, 533 U.S. at 699.

75. Because Petitioner was detained without any determination that he poses a danger or flight risk, and because he in fact poses no danger or flight risk, his detention violates due process.

76. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**COUNT III**  
**(Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**  
**Contrary to Law and Constitutional Right)**

77. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

78. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A), (B).

79. 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.” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

80. Respondents’ revocation of Petitioner’s order of supervision was contrary to the agency’s constitutional power under the Fifth Amendment’s Due Process Clause, as explained above.

81. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.

82. 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, nor had the officer been delegated authority to revoke an order of supervision.

83. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute.

84. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, 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 s/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.

85. Nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

86. The revocation should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

87. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**COUNT IV**  
**(Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)  
Arbitrary and Capricious)**

88. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

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

90. Respondents’ revocation of Petitioner’s order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

91. An agency decision that “runs counter to the evidence before the agency” is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

92. Respondents’ decision to revoke Petitioner’s order of supervision ran 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/her order of supervision and no new facts or changed circumstances suggest s/he would.

93. The revocation also “failed to consider important aspects of the problem” before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

94. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.

95. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community and for whom the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

96. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal. This alternative would vindicate the government's interests in effectuating a removal order and save it the expense of detention not needed to guarantee Petitioner's appearance.

97. Fourth, Respondents failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

98. For these and other reasons, Respondents’ revocation of Petitioner’s order of supervision was arbitrary and capricious and should be held unlawful and set aside.

99. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney’s fee.

**COUNT V**  
**(Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**  
**In Excess of Statutory Authority)**

100. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

101. Under the 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).

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

103. 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.

104. 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)

105. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations. So it was in excess of statutory authority and should be held unlawful and set aside.

106. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**COUNT VI**  
**(Ultra Vires Action)**

107. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

108. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

109. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

110. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**COUNT VII**  
**(Violation of the *Accardi* Doctrine)**

111. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 55 as if the same were incorporated herein in full.

112. 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”).

113. 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.” *Cesay 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).

114. 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 without advance notice.

115. 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.

116. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

**RELIEF REQUESTED**

**WHEREFORE**, Petitioner, FRANCISCO PORTELA-MORA, prays that this Honorable Court grant him the following relief:

1. Accept jurisdiction over this action.
2. Immediately issue an order directing Respondents to show cause why the writ should not be granted.
3. Issue a writ of *habeas corpus*, directed to Respondents, ordering Petitioner's immediate release from custody.
4. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
5. 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;
6. Order that Respondent immediately release Petitioner if he is subsequently transferred from his current detention to any other facility and continuing thereafter.
7. Order Respondents to provide this Honorable Court and counsel for the Petitioner with at least three days' notice prior any attempt to deport the Petitioner from the United States.
8. Award Petitioner his suit money, costs and attorney's fees incurred as a result of bringing this action.

9. Grant such further relief as Petitioner may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

**DEVORE LAW GROUP, P.A.**

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By: s/ Jeffrey A. Devore

**JEFFREY A. DEVORE, ESQ.**

Florida Bar No. 0845493

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**VERIFICATION**

Pursuant to 28 U.S.C. § 2242 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney and I have discussed with the Petitioner's family the facts and 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.

By: s/ Jeffrey A. Devore  
**JEFFREY A. DEVORE, ESQ.**  
Florida Bar No. 0845493  
jdevore@devorelawgroup.com

# Exhibit No. 1

Official Website of the Department of Homeland Security



U.S. Immigration and Customs Enforcement

Report Crimes: Email or Call 1-866-DHS-2-ICE

Home Who We Are What We Do Newsroom Information Library Contact ICE

## Search Results: 1

FRANCISCO PORTELA-MORA

Country of Birth : Cuba

A-Number:

Status : In ICE Custody

State: FL

Current Detention Facility: Florida Soft Side South

\* Click on the Detention Facility name to obtain facility contact information

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