

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

FRANK PADRON FUENTES,
A 

Petitioner-Plaintiff,

v.

**Garrett Ripa, in his official
capacity as Field Office Director,
Miami field Office, U.S.
Immigration and Customs
Enforcement; Warden, Florida
Baker Correctional Institute;
Ronnie Woodall, Warden, Florida
Baker Correctional Institute U.S.
Department of Homeland Security;
and U.S. Immigration and Customs
Enforcement,**

Respondents-Defendants.

Case No. 3:26-cv-00134

**Verified Petition for Writ of
Habeas Corpus**

INTRODUCTION

1. This case challenges the unlawful detention of **FRANK PADRON FUENTES** (“Petitioner” or “[Mr. Padron Fuentes]”), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at **Florida Baker Correctional Institute**, 20706 US 90 W SANDERSON, FL 32087.

2. Petitioner is neither a flight risk nor a danger to the community.

3. But on or about **November 18, 2025**, ICE detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

4. ICE has previously found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on **May 17, 2013**, under an order of supervision.

5. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE.

6. The ninety days was completed on **August 15, 2013**.

7. At a regularly scheduled check-in with ICE ERO, in Orlando, FL, on **November 18, 2025**, Respondents-Defendants suddenly revoked Petitioner's order of supervision and arrested him. Petitioner has been detained at **Florida Baker Correctional Institute** since then.

8. Respondents-Defendants' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

9. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

PARTIES

10. Petitioner has lived in the United States for over twenty (20) years. Prior to petitioner's detention, he was residing in Orlando, Florida. Petitioner is currently detained at **Florida Baker Correctional Institute**.

11. Petitioner-Defendant, **Garrett Ripa**, in his official capacity as Field Office Director, Miami field Office, U.S. Immigration and Customs Enforcement, which includes **Florida Baker Correctional Institute**, where Petitioner is currently detained.

12. Petitioner-Defendant, Warden of **Florida Baker Correctional Institute**, is sued in his official capacity as Warden of **Florida Baker Correctional Institute**, where petitioner is currently detained.

13. Petitioner-Defendant, **Ronnie Woodall**, Warden of **Florida Baker Correctional Institute**, is sued in his official capacity as Warden of **Florida Baker Correctional Institute**, where petitioner is currently detained.

14. Petitioner-Defendant, U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

15. Petitioner-Defendant ICE, is a component agency of DHS.

JURISDICTION AND VENUE

16. 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.*

17. Venue is proper in this district because Respondent-Defendant, Warden of **Florida Baker Correctional Institute**, is Petitioner's immediate custodian and under 28 U.S.C. § 1391(e)(1) because Respondents-Defendants are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

18. In anticipation of the government's response, the government will argue that the "*Zipper Clause*," is a jurisdictional bar on bringing this petition.

19. The zipper clause is "a jurisdictional bar where" petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020), however, the zipper clause only applies to claims requesting review of a removal order. *See Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

20. Petitioner is **51 (Fifty-one)** years old and came to the United States from Cuba, on March 3, 2005. Petitioner has resided in the United States continuously since then. On October 12, 2012, Petitioner was convicted of Conspiracy to Commit Access Device Fraud [18 U.S.C. §§ and 18 U.S.C. § 2, Access Device Fraud – Possession of 15

or More unauthorized Access Devices 18 U.S.C. §§1029(a)(3) and (b)(2), (c)(1)(a)(i). Petitioner was sentenced to thirteen (13) months in prison, followed by three (3) years of supervised release. On November 13, 2012, Petitioner was convicted and sentenced on the charge of Racketeering, related to this case and was sentenced to 5 years of probation, to run concurrently with the federal case.

21. Petitioner was ordered removed to Cuba on **May 16, 2013**.

22. Petitioner's wife, Monica Hernandez, is a United States Citizen. His son, F [REDACTED] is a United States Citizen (USC), born [REDACTED] daughter, F [REDACTED] (USC), born [REDACTED], F [REDACTED] (USC), born [REDACTED], F [REDACTED] (USC), born [REDACTED], F [REDACTED] is a Lawful Permanent Resident (LPR), and Petitioner's grandchildren, [REDACTED] were born in the United States and all are United States Citizens. His mother, Gloria Fuentes, is also a United States Citizen, along with most of his extended family.

23. Petitioner is neither a flight risk nor a danger to the community. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention under an order of supervision for over twelve (12) years.

24. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE.

25. When he appeared at one of his check-ins, on **November 18, 2025**, he was taken into custody, without any explanation, and told that he would await removal.

26. Cuba has previously refused to allow Petitioner back into their country. Otherwise, Petitioner would have already been there.

27. Petitioner also has a medical condition, Essential (primary) hypertension - I10 (Primary), Nonrheumatic aortic (valve) insufficiency - I35.1, Diabetes, that is exacerbated when the Petitioner is under pressure or is in a situation such as detention. Petitioner takes medication for these conditions. **(Exhibit A, Petitioner's medical Records)**

28. Petitioner needs to be out of custody so that he can take care of his family, as he has done since he was released on May 17, 2013. **(Exhibit B, Petitioner's Order of Supervision)**

29. Petitioner has an important medical appointment with the Cardiovascular Institute of Orlando, on March 24, 2026. **(Exhibit C, Petitioner's appointment letter with the Cardiovascular Institute of Orlando)**

30. Petitioner needs to be out of custody so that he can take care of his mother, **Gloria Fuentes**, who has a myriad of conditions, including the following:

- R42 Dizziness and giddiness
- Rs1 Headache
- G44.221 Chronic tension-type headache, intractable

- G43.019 Migraine without aura, intractable, without status migrainosus
- F34.1 Dysthymic disorder
- M54.2 Cervicalgia
- R41.1 Anterograde amnesia
- G31.84 Mild cognitive impairment, so stated
- M48.02 Spinal stenosis, cervical region
- E53.8 Deficiency of other specified B group vitamins
- E53.9 Vitamin B deficiency unspecified
- E55.9 Vitamin D deficiency, unspecified
- 72.9 Aneurysm of unspecified site A

(Exhibit D, Gloria Fuentes' Medical Records)

31. Petitioner's young son,  age seven (7), has been diagnosed with Attention-Deficit/Hyperactivity Disorder, Combined Presentation, Oppositional Defiant Disorder (Rule Out) and Disruptive Mood Dysregulation Disorder (Rule Out). These children need both parents as they are a handful. **(Exhibit E, Neuropsychological Evaluation)**

32. Petitioner has been working as a truck driver for many years. **(Exhibit F, Employment letter)**

33. Petitioner has a large extended family that live in the United States and all are either United States Citizens or Lawful Permanent Residents. They are as follows:

34. Many members of his extended family have been born in the United States, including several children and grandchildren. **(Exhibit G, Children and Grandchildren's birth certificates)**

35. Many members of the community vouch for the Petitioner, as he is a great family man. **(Exhibit H, letters from the community)**

36. Petitioner owns his own house without a mortgage. **(Exhibit I, Property Records)**

37. Petitioner has paid his taxes since leaving incarceration. **(Exhibit J, Federal Income Tax Returns)**

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

38. “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).

39. 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). Neither of those are applicable here as Petitioner has been under supervision for twelve (12) years and the Petitioner has not one blemish on his record.

40. “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

41. 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”).

42. Under the removal statute, the removal period begins when an order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B).

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. But even where initial 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. Removal is not reasonably foreseeable as Cuba has declined to accept the Petitioner many times.

46. Regulations purport to give additional reasons, beyond those listed at 8 U.S.C. § 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”).

47. 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).

48. Any presumptively reasonable six-month extended detention to which the Government may have been entitled expired in November 13, 2013. *See Peynado v. Bureau of Immigration & Custom Enforcement*, No. 1:08–CV–2107, 2009 WL 136749, at 3, 2009 U.S. Dist. LEXIS 3538, at 6 (M.D.Pa. Jan. 20 2009)

49. 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). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under part 241 that do not include the power to revoke release” insufficient to grant authority to revoke an order of supervision).

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

51. None of this was done here and Petitioner has been a model citizen since his release from prison in 2013.

52. Petitioner has not been arrested since the day that he left prison in 2013.

The APA Sets Minimum Standards for Final Agency Action

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

54. 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).

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

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

57. 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

58. 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.”).

59. *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).

60. 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 One

Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process

61. Petitioner realleges all paragraphs above as if fully set forth here.

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

63. ICE has previously found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on **May 17, 2013**, under an order of supervision. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE.

64. The ninety days was completed on August 15, 2013.

65. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order.

66. There have been no change in circumstances that warranted the order's revocation.

67. 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.

68. 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.

Count Two
Violation of the Fifth Amendment of the U.S. Constitution Procedural Due Process

69. Plaintiffs reallege all paragraphs above as if fully set forth here.

70. *Mathews v. Eldridge*, 424 U.S. 319 (1976), at 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.

71. 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.

72. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner.

73. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked.

74. 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.

75. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain.

76. 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.

77. The third factor, the government's interest, also favors Petitioner.

78. 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.

79. 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.

80. 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.

Count Three

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

81. Petitioner reallege all paragraphs above as if fully set forth here.

82. 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)*.

83. 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).

84. 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.

85. 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.

86. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director.

87. 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.

88. 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.

89. 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.

90. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he had not.

91. 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.

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

93. 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.

Count Four

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

94. Petitioner realleges all paragraphs above as if fully set forth here.

95. 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).

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

97. 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).

98. 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.

99. Petitioner has never violated a condition of his order of supervision and no new facts or changed circumstances suggest he would.

100. 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).

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

102. 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, including financial and administrative costs incurred by the agency due to unnecessary detention.

103. 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.

104. 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.

105. 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.

106. 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.

Count Five

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

107. Petitioner realleges all paragraphs above as if fully set forth here.

108. “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).

109. 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.

110. Even then, if removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by § 1231(a)(6).

111. 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.

112. 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)

113. 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.

Count Six Ultra Vires Action

114. Petitioners reallege all paragraphs above as if fully set forth here.

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

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

Count Seven

Violation of the *Accardi* Doctrine

117. Petitioner realleges all paragraphs above as if fully set forth here.

118. 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”).

119. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. “As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release” and Petitioner “is entitled to release on that basis alone.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); see also, e.g., *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas

petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

120. 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.

121. 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.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. 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;
- d. Order Petitioner's immediate release, under the same conditions he has had for over twelve years, **(no ankle monitor)**;
- e. Award Petitioner costs and reasonable attorneys' fees; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

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/s/ Julio Gutierrez

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: January 23, 2026

MIAMI, FLORIDA

/s/ Julio Gutierrez

Attorney for Petitioner-Plaintiff