

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PAVEL LEIVA,)	
Petitioner)	
)	
vs.)	PETITION FOR WRIT OF
)	HABEAS CORPUS
Warden, KROME SERVICE)	
PROCESSING CENTER;)	
)	
Miami Field Office Director,)	
Enforcement and Removal Operations,)	
IMMIGRATION AND CUSTOMS)	
ENFORCEMENT)	
)	
Pamela Bondi, ATTORNEY GENERAL;)	
)	
AND)	
)	
Kristi Noem, SECRETARY OF THE)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
Respondents.)	

INTRODUCTION

1. This case challenges the unlawful detention of Pavel Leiva (Petitioner), who is currently in the custody of Immigration and Customs Enforcement (ICE) at the Krome Service Processing Center (Krome) in Miami, Florida. Petitioner has a final order of removal but was granted an Order of Supervision (OSUP) after ICE determined that he was neither a flight risk nor a danger to the community. The Petitioner has no violent criminal history. Since that time, Petitioner fully abided by the order's terms, including attending all regularly scheduled check-ins with ICE.

2. On or about December 30, 2025, during such a routine check-in, ICE revoked Petitioner's OSUP and re-detained him without prior notice, without providing him the reasons for the revocation or giving him an opportunity to be heard or respond to the revocation. ICE did not identify any violation of the conditions of supervision, any changed circumstances, or any basis to conclude that removal had become reasonably foreseeable.
3. While reporting, the Petitioner advised the ICE officers that he had suffered a heart attack previously and had not been feeling well and had put off seeking medical treatment in order to appear for his supervision appointment. On the same day that he was detained by ICE, the Petitioner expressed to the officers he was feeling chest pains and was concerned. The officers told him that he was pretending to have chest pains in order to be released.
4. He was placed in a holding cell with more than twenty five men who alerted the ICE officers that the Petitioner was in distress. The officers removed him from the room and laughed at him. They again advised him that he was pretending in order to seek release. Medical staff eventually observed the Petitioner, advised ICE officers he was suffering a medical emergency, and transported him to the hospital.
5. The Petitioner was then hospitalized, while in ICE custody, from on or about December 20, 2025 to on or about January 16, 2026. While in detention he was guarded by ICE officers who intentionally antagonized him and caused him emotional distress to the point that medical staff was required to intervene.
6. Since the OSUP revocation, and following his release from the hospital, the Petitioner has been detained at the Krome Service Processing Center. He has been receiving sub

par care including no access to insulin, a lack of care, and a lack of attention to hygienic practices – including failure to change bed linens.

7. Petitioner is a fifty-four-year-old native and citizen of Cuba who was previously a Lawful Permanent Resident of the United States. He was ordered removed on October 20, 2021 after serving prison for a conviction for trafficking in counterfeit devices.
8. At the time of Petitioner's arrest and detention at his check-in with ICE on December 30, 2025, there was no material change in circumstances. Further, his arrest and detention did not conform to the regulatory procedure which includes notice of an OSUP revocation and opportunity to prepare for removal. Therefore, ICE's decision to detain Petitioner was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as well as a violation of his substantive and procedural due process rights.
9. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act (INA) and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Given that ICE failed to follow mandatory statutory and regulatory procedures governing revocation of supervision, Petitioner's continued detention is unlawful.
10. The Court should order Petitioner's release from custody.

JURISDICTION

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article 1, §9, clause 2 of the United States

Constitution (Suspension Clause). The instant petition challenges the fact and manner of Petitioner's detention, not the validity of the underlying order of removal.

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13. Furthermore, 8 U.S.C. § 1252(b)(9), § 1252(g), and § 1252(a)(2)(B)(ii) do not strip this Court of jurisdiction to review this petition because Petitioner challenges the lawfulness of his detention following revocation of an OSUP, not the government's decision to execute a removal order. Courts consistently distinguish between challenges to removal itself and challenges to detention procedures. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152–55 (W.D.N.Y. 2025); *Rubanov v. Trump*, 2025 WL 4721345 at *8 (S.D. Fla, July 30, 2025); *Grigorian v. Bondi*, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025).

VENUE

14. Venue is proper because the Petitioner is detained under the authority of the Respondents at the Krome Service Processing Center located at 18201 SW 12th Street, Miami, FL 34194, which is within this district.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees, officers, and agents of the United States and the detention which gave rise to this claim is ongoing in the district.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents "forthwith," unless the petitioner is not entitled to relief. 28

U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

17. The Court should grant the petition for writ of habeas corpus “forthwith”. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); see *In re Bennett*, 139 F.3d 850 (11th Cir. 1998).

PARTIES

18. Petitioner, Pavel Leiva, is a citizen of Cuba who has been in immigration detention since on or about December 30, 2025 after complying with his order of supervision (OSUP) since 2021.
19. Respondent Warden Krome Service Processing Center is the warden overseeing the operations at the Krome Service Processing Center. As such, the Warden is Petitioner’s immediate custodian and is responsible for Petitioner’s detention. He is named in his official capacity.
20. Respondent Miami Field Office Director is the Director of the Miami Field Office of ICE’s Enforcement and Removal Operations division and the Krome Service Processing Center. As such, the Miami Field Office Director is Petitioner’s immediate

custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

21. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Substantive Due Process

23. Petitioner incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

24. The substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution protects the Petitioner's liberty interests.

25. ICE's decision to detain the Petitioner after his previous release from custody was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and therefore a violation of the Petitioner's Substantive Due Process Rights.

26. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

27. The Petitioner has a liberty interest in freedom from detention. The government violated Petitioner's procedural due process rights when they re-arrested and detained Petitioner.
28. Multiple district courts have recently held that the government bears the burden of showing that there is a substantial likelihood that a person will be imminently removed before his OSUP may be revoked. See *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025) (emphasizing 8 C.F.R. §§ 241.13(i)(2) & 241.4(b)(4)), see also *Roble v. Bondi*, 2025 WL 2443453, at *9-11 (D. Minn. Aug. 25, 2025); *Tadros v. Noem*, 2025 WL 1678501 at *7 (D.N.J. June 13, 2025); *Nguyen v. Hyde*, 2025 WL 1725791 at *2-4 (D. Mass. June 20, 2025). Ultimately, the *Escalante* court reasoned that “[i]mposing the burden of proof on the alien each time he is re-detained would lead to an unjust result and serious due process implications.” *Escalante*, 2025 WL 2206113, at *3.
29. Respondents have failed to meet their burden of showing that there is a substantial likelihood that Petitioner's removal is imminent. In fact, they have failed to provide Petitioner with a hearing or interview or, indeed, any information regarding the reason for his re-detention. Indeed, given that Petitioner is a Cuban citizen with a criminal conviction, it would be unlikely for Respondents to be able to show that his removal could be executed or that Cuba will accept him. Accordingly, Petitioner's substantive due process rights under the Fifth Amendment have been violated.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Procedural Due Process

30. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1 – 22 as if fully set forth herein.
31. Although it is well established that non-citizens are entitled to due process under the Fifth Amendment, the Eleventh Circuit has long held that a petitioner “must show

substantial prejudice,” meaning that the alleged violation might have affected the outcome, to prevail on a procedural due process challenge regarding removal proceedings. *Priva v. U.S. Att’y Gen.*, 34 F.4th 946, 954 (11th Cir. 2022) (emphasis added).

32. As Petitioner explains in greater detail below, the facts of his re-detention after the revocation of his OSUP without prior notice, without an individualized determination regarding any change in circumstances or evidence that he had become a flight risk or that his removal was even possible, let alone imminent, rises to the level of substantial prejudice. Had ICE followed its own procedures, the outcome may have been different thereby establishing that ICE violates his Fifth Amendment rights as a matter of procedural due process.
33. It is a longstanding principle in both federal and state law that “where one has been released on bail, he cannot be rearrested in the same jurisdiction on the same charge on which he was originally arrested.” *Williams v. Dart*, 967 F.3d 625, 635 (7th Cir. 2020) (quoting *United States ex rel. Heikkinen v. Gordon*, 190 F.2d 16, 19 (8th Cir. 1951))
34. This same principle has been applied to non-citizens released on bail and subsequently re-arrested. See *Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (reversing denial of habeas corpus to detainee released on bail then re-arrested under original warrant); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1058 (N.D. Cal. 2021) (granting preliminary injunction on procedural due process claim and ordering that the government could only re-detain a non-citizen previously released on bond after providing the person with notice and hearing); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969-70 (N.D. Cal. 2019) (holding that non-citizen habeas petitioner’s due process rights were violated after he was released on bond and subsequently rearrested *without* a demonstration that circumstances had changed); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (holding that when a previous bond determination has been made

by an immigration judge, no change should be made by a District Director absent a change of circumstances).

35. There were no material changes in the Petitioner's circumstances which justified his re-detention in 2026, more than four years after his initial release from custody, nor did he receive notice, hearing, or even reasons from ICE to justify his re-detention. Accordingly, Petitioner's procedural due process rights under the Fifth Amendment have been violated.

THIRD CLAIM FOR RELIEF
Violation of the INA

36. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1-22 as if fully set forth herein.
37. The INA authorizes post-order detention only where removal is reasonably foreseeable. See 8 U.S.C. § 1231(a)(6); INA § 241(a)(6); see also *Zadvydas v. Davis*, 533 U.S. 678, 690–99 (2001).
38. By re-detaining Petitioner without any determination that removal had become significantly likely in the reasonably foreseeable future, ICE exceeded its statutory authority. The INA does not permit indefinite re-detention of individuals long released under supervision with findings required by statute and regulation as analyzed under the *Accardi* Doctrine below.

FOURTH CLAIM FOR RELIEF
Violation of *Accardi* Doctrine

39. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1-22 as if fully set forth herein.

40. The U.S. Supreme Court established the *Accardi* Doctrine which explains that agencies and government officials must follow their own regulations. See *Accardi v. Shaughnessy*, 347 U.S. 240, 268 (1954).
41. In the instant case, ICE violated its own procedures and regulations by re-detaining Petitioner without the required notice and individualized consideration before revoking his OSUP. See 8 U.S.C. § 1231(a)(3); (a)(6) (specifying OSUP requirements).
42. DHS regulations governing procedures for revoking an OSUP, 8 C.F.R. § 241.4(l)(1) & (2)(ii-iii), provide that the government may revoke if an individual violates the conditions of his release.
43. Title 8 C.F.R. § 241.4 also sets forth procedures for review if ICE re-detains a person, including notice explaining the revocation and an informal interview permitting a person an opportunity to respond. 8 C.F.R. § 241.4(l)(1). These steps in the process are to be followed by a custody review within three months of the person's re-detention. 8 C.F.R. § 241.4(l)(3).
44. Individuals granted an OSUP have a due process right to prior notice before they can be re-detained for purposes of removal, especially those persons who have resided in the United States for an extended period such as the Petitioner. See *Ceesay*, 781 F. Supp. 3d at 168-69; *Rombot v. Souza*, 296 F. Supp. 3d 383 at 388 (D. Mass. 2017); *Ragbir v. Sessions*, 2018 WL 623557, *3-6 (S.D.N.Y. Jan. 29, 2018) (finding the right to an orderly removal to extend beyond the language of the OSUP revocation of the OSUP to include consideration of factors such as the number of years the individual had resided in the United States and his ties to the community); *Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020); *Drammeh v. Clark*, 2020 WL 5122445, at *2 (W.D.

Wash. 2020) (prior ICE practice shows that an “orderly departure” envisages a period of weeks or months to allow an individual to settle his affairs).

45. In *Ceesay*, the court held that an unlawful detention occurred, in part, because ICE failed to provide the petitioner with the “prompt informal interview” required under 8 C.F.R. § 241.4(1)(2) when it revoked the petitioner’s OSUP. 781 F. Supp. 3d 137, 159-62; see *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (holding that an individual re-detained pending removal had a right to notice and an informal interview under 8 C.F.R. § 241.4(l)).
46. “ICE’s decision to re-detain a noncitizen ... who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) ICE must notify the individual and provide reasons for the revocation of the OSUP, and “conduct an initial informal interview promptly after [person’s] return to custody to afford [the individual] an opportunity to respond to the reasons for revocation.” 8 C.F.R. § 241.13(i)(3); see *Liu v. Carter*, 2025 WL 1696526, at *2–3 (D. Kan. June 17, 2025) (reversing revocation of release when ICE failed to comply with 8 C.F.R. § 241.13).
47. In *Rubanov*, the Southern District of Florida court determined that ICE’s OSUP revocation failed to give the petitioner “meaningful notice” of his re-detention. 2025 WL 4721345 at *14. For example, his revocation was insufficiently detailed; it was based on changed circumstances but did not specify the actual circumstances. *Rubanov*, 2025 WL 4721345 at *14-15; see *Perez-Escobar v. Moniz*, 2025 WL 2084102, at *2

(D. Mass. July 24, 2025) (finding a revocation notice deficient because it failed to “identify any specific changed circumstances”).

48. At the time of Petitioner’s arrest and detention at his check-in with ICE, there had been no material change in his circumstances, no notice that his OSUP would be revoked, no explanation for the revocation, no opportunity to address any such reasons, and no indication of how or when his removal would be effectuated. The Petitioner has suffered grave harm as a result of this revocation suffering a heart attack within hours of his detention.

49. Accordingly, under the *Accardi* Doctrine, Petitioner was unlawfully arrested and detained given that ICE did not follow its own procedures and regulations. ICE’s failure to provide Petitioner with (1) advance notice that his Order of Supervision would be revoked; (2) written notification of the specific reasons for revocation at the time of his re-detention; (3) a prompt informal interview affording him an opportunity to respond; and (4) any explanation of what changed circumstances make removal reasonably foreseeable, constitutes a clear violation of the agency’s own binding regulations. Because ICE did not comply with the mandatory procedural safeguards established in its own regulations, Petitioner’s detention is unlawful.

FIFTH CLAIM FOR RELIEF
Violation of Administration Procedure Act

50. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1-22 as if fully set forth herein.

51. Title 5 U.S.C. § 706(2)(A) of the Administrative Procedure Act (APA), providing the standard for judicial review of federal agency actions, states that “[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to

be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” This standard permits courts to set aside agency actions that violate the law or constitute an abuse of discretion.

52. The final agency action at issue here was ICE’s revocation of Petitioner’s OSUP which resulted in his immediate re-detention.

53. ICE’s decision to revoke Petitioner’s OSUP and re-detain him without notice or explanation was arbitrary and capricious. The government failed to perform an interview or provide any reasoned analysis that would provide the Petitioner with sufficient notice or make removal reasonably foreseeable. Thus, this lack of decision-making or compliance with established procedures violates the APA and should be set aside. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
- c. Alternatively, issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- e. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 3rd day of February 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 the Petitioner's attorney. I am aware of the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: February 3, 2026

/s/ Fairuze Sofia

Fairuze Sofia