UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case No.:

Sadiel Viset-Kinet,

Petitioner,

v.

Kristi Noem, Secretary of the Department of Homeland Security; **Pamela Bondi,** Attorney General of the U.S.; **Todd M. Lyons,** Acting Director U.S. Immigration and Customs Enforcement; **Garrett Ripa**, ICE ERO Miami Field Office Director; **Warden**, Warden of Broward Transitional Center

Respondents.
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PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Sadiel Viset-Kinet seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents. On or about March 9, 2021, Petitioner was issued a Notice and Order of Expedited Removal under the Immigration and Nationality Act ("INA") § 235(b)(1). On April 8, 2021, Petitioner was released under Order of Supervision ("OSUP"), after Immigration and Customs Enforcement ("ICE") decided that he did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e). Petitioner has maintained a clean record since being placed under supervision, demonstrated rehabilitation, stability, and full compliance with the laws and requirements of the United States. Once an OSUP has been granted, ICE's own regulations govern when, how, and who can revoke it. *See* 8 C.F.R. §§ 241.4(1), 241.13(i). These regulations provide

core procedural protection as they guard against arbitrary revocation by low-level officers and require both notice and an opportunity to be heard.

2. Petitioner appeared on January 11, 2026, for his regularly scheduled reporting in compliance with his OSUP. Despite their compliance with ICE requirements, they were taken into custody without explanation and are currently being detained at the Florida Soft Side South facility in Ochopee, Florida, also known as Alligator Alcatraz. On February 1, 2026, Petitioner was transferred to the Broward Transitional Center ("BTC") located 3900 N. Powerline Road Pompano Beach, FL 33073.

3. At the time of his arrest, ICE did not explain its reasons for revoking nor did ICE officers ask Petitioners any questions. Petitioner disclosed to ICE that he has a pending Form I-485, Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act with U.S. Citizenship and Immigration Services ("USCIS"). Petitioner also disclosed to ICE that he held a valid parole under Immigration and Nationality Act ("INA") 212(d)(5). On March 20, 2025, during a routine supervision appointment, ICE detained Petitioner for a few hours and released him the same day pursuant to an Interim Notice of Authorization of Parole. This parole was granted for one year, valid through March 20, 2026. Petitioner has faithfully complied with ICE's OSUP requirements. ICE's prior determination that his removal is not reasonably foreseeable has not materially changed.

4. Respondents violated federal regulations by revoking the Petitioner's OSUP under 8 C.F.R. §241.4(1) (governing procedures for OSUP revocation). Petitioner has violated the terms of his supervision, and the conditions supporting his release remain unchanged. ICE provided no written explanation, no finding of violation, and no opportunity to respond before canceling his supervision orders and taking him into custody, in violation of both agency regulations and his

Fifth Amendment rights. Arbitrary or unexplained revocation is unlawful.

5. Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. By disregarding the mandatory procedures of 8 C.F.R. §§ 241.4(b)(2), 241.13, ICE's detention is procedurally defective and therefore unlawful.

6. To date, Respondents have not secured travel documents or otherwise demonstrated that Petitioner's removal is likely in the reasonably foreseeable future. Petitioner has fully cooperated with Respondents' request and has not delayed or obstructed removal in any way. Respondents, however, have been unable to effectuate his removal.

CUSTODY

7. Petitioner satisfies the "in custody" requirement for habeas review because he is currently detained by ICE-ERO at Broward Transitional Center in Pompano Beach, Florida.

JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Art. I, Sec. 9, Cl. 2 of the United States Constitution (Suspension Clause). While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, 8 U.S.C. § 1252(a)(l), (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus claims by aliens challenging "the constitutionality of the entire statutory scheme under the Fifth Amendment." [2] This case arises under the United States Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. §§1101 *et seq.*, and the Due Process Clause of the Fifth Amendment. This Court has remedial authority under its inherent authority and the All Writs Act, 28 U.S.C. §1651.

9. Furthermore, 28 U.S.C. §2241 authorizes district courts to grant writs of habeas

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

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

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

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

VENUE

13. Venue is proper because Petitioner is detained in ICE custody at Broward

Transitional Center in Pompano Beach, Florida, within the geographical confines of the Southern District of Florida. *See* 28 U.S.C. § 1391(e)(l)(B), 28 U.S.C. § 1391(e)(l)(C); 28 U.S.C. §2241(d).

PARTIES

14. Petitioner, Sadiel Viset-Kinet ("Petitioner"), is a 23-year-old native and citizen of Cuba who entered the US in or around March 2021. Petitioner was served a Notice and Order of Expedited Removal under INA § 235(b)(1) on April 9, 2021. Petitioner was paroled on March 20, 2025, pursuant to Section 212(d)(5) of the Immigration and Nationality Act ("INA"). He is currently detained at BTC. Despite complying with his order of supervision, he was arbitrarily taken into custody on January 11, 2026, at his last ICE check-in.

15. Respondent, Pamela Bondi, is the Attorney General of the United States and head of the Department of Justice. Ms. Bondi is the official ultimately responsible with proper enforcement of federal immigration law. This Respondent is being sued in her official capacity.

16. Respondent, Warden of the Broward Transitional Center, which is the detention center where Petitioner is being detained. As such, they are the legal custodian of Petitioner. This Respondent is being sued in their official capacity

17. Respondent, Garrett Ripa, is the ICE Field Office Director for the Miami Field Office. In this capacity, he has jurisdiction over Petitioners and is a legal custodian of Petitioner. Mr. Ripa is sued in his official capacity, as well as any other individual officially occupying the office of Miami ICE Field Office Director after his departure from that office.

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

19. Respondent Todd M. Lyons, Acting Director U.S. Immigration and Customs Enforcement, is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including noncitizen detention. As such, he is a legal custodian of Petitioner. This Respondent is being sued in his official capacity.

EXHAUSTION

20. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

21. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claims seek to remedy.

22. There are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U.S. 137 (1993), and an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 61-62 (2004).

FACTUAL AND PROCEDURAL HISTORY

23. Petitioner, Sadiel Viset-Kinet, is a 23-year-old native and citizen of Cuba. **App.**, Exh. A, p.1.

24. Petitioner entered the United States without inspection on or about March 9, 2021, and was issued a Notice and Order of Expedited Removal under INA § 235(b)(1). **App.**, Exh. B, pgs. 2-5.

25. On or about April 8, 2021, ICE released Petitioner under OSUP, with which he has

fully complied for over four years. **App.**, Exh. C, pgs. 6-7.

26. On March 20, 2025, during a routine supervision appointment, ICE detained and then released Petitioner the same day pursuant to an Interim Notice of Authorization Parole pursuant to INA § 212(d)(5), which was granted for one year, valid through March 20, 2026.**App.**, Exh. D, pg. 8.

27. On May 6, 2025, USCIS approved Petitioner's Employment Authorization Document ("EAD") under 8 C.FR. 274a.12 (c)(11), valid through March 20, 2026, confirming DHS's recognition of his lawful parole status.

28. On May 23, 2025, USCIS received Petitioner Form's I-485, Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act (Receipt No. [redacted]3). Biometrics were completed on July 3, 2025, and the application remains pending. **App.**, Exh. C, pgs. 9-11.

29. Petitioner applied for a renewal of his Cuban passport on December 9, 2025, and provided ICE with copies of the biographic page, application, and payment receipt.

30. On December 19, 2025, ICE issued a notice requiring Petitioner to report on January 6, 2026. Petitioner appeared to the ICE ERO Miramar office on December 6, 2026, and was instructed to return on Sunday, January 11, 2026. On January 11, 2026, ICE ERO detained Petitioner.

31. The reason that Petitioner has been affirmatively permitted to remain in the United States under an OSUP is because, like with other Cuban nationals since the 1950s, there has been "no significant likelihood of removal in the reasonably foreseeable future," *Zadvydas* v. *Davis*, 533 U. S. 678, 701 (2001), for decades on end.

32. Upon information and belief, Petitioner has never violated the terms of his OSUP.

33. Federals regulations which afford procedural protections or "that affect substantial individual rights and obligations" are binding upon agencies without a showing of prejudice. *Morton* v. *Ruiz*, 415 U. S. 199, 232 (1974); *id.*, at 235 ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.") (citations omitted); accord *Port of Jacksonville Mar. Ad Hoc Comm., Inc.* v. *U.S. Coast Guard*, 788 F. 2d 705, 709 (CA11 1986) ("The guideline clearly was intended to confer a procedural benefit and therefore, under the *American Farm Lines* framework, no inquiry into substantial prejudice was necessary."); *Kurapati* v. *USCIS*, 775 F. 3d 1255, 1262 (CA11 2014) (" 'Even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations.' ") (citations omitted); *Grigorian* v. *Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025) ("It is a rather 'unremarkable proposition that an agency must abide by its own regulations.'") (citations omitted).

34. Although the Migration Accords with Cuba were modified to begin some removals to Cuba on January 12, 2017, that relationship fell apart in 2019, leading to visa sanctions against Cuba due to recalcitrance.

35. Beginning earlier this year, removal flights to Cuba have started up again, but there is no publicly available information as to the details of the agreement, and which categories of persons nominated for removal by the DHS are accepted by the Cuban authorities.

36. At the same time, upon information and belief, and as will likely have evidentiary support after a reasonable opportunity for further investigation or discovery, many Cuban nationals are being deported to third countries, mostly to Mexico.

37. Regarding his personal circumstances, Petitioner has a brother who is a Lawful

Permanent Resident and his mother and stepfather, who are both in removal proceedings after having been released into the U.S. under an Order of Release on Recognizance ("Form I-220A"). Petitioner's stepfather is currently battling stage 4 prostate cancer. Petitioner has no other family ties to Cuba. Petitioner's prior counsel filed a Form I-246, Application for Stay of Deportation or Removal, with ICE ERO on January 15, 2026. ICE ERO subsequently denied the stay and provided no reason. **App.**, Exh. D, pg.12

Background Constitutional Framework for Civil Immigration Detention

38. Civil immigration detention is presumptively unconstitutional absent its authorization by a special justification enacted pursuant to an Act of Congress. *Sopo* v. *U. S. Att'y Gen.*, 825 F. 3d 1199, 1210 (CA11 2016) ("Under the Due Process Clause, civil detention is permissible only when there is a 'special justification' that 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.' ") (citation omitted), vacated on mootness grounds, 890 F. 3d 952 (2018).

39. Thus, absent a statutory special justification, civil immigration detention is unlawful and unconstitutional.

40. Further, only criminal detention, following a lawful conviction by jury trial, may be utilized for punitive purposes.

41. Civil detention becomes punitive when it is being used for purposes that are not contemplated within the special statutory justification authorizing its use. See *Bell* v. *Wolfish*, 441 U. S. 520, 539 (1979) ("Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.' Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the

governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.") (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F. 2d 849, 850 (CA11 1989) ("Civil contempt is a coercive device imposed to secure compliance with a court order and if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.") (citation omitted); *Lynch* v. *Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) ("A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.") (citations omitted); *United States* v. *Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

42. Thus, where civil immigration detention becomes punitive in its nature, it has become unlawful and unconstitutional.

43. In sum, civil immigration detention is lawful only: (1) when it is being administered in accordance with the terms of duly enacted statutes; (2) which are based upon a special justification that outweighs the deprivation of liberty at stake; and (3) it is being carried out in a manner that is consistent with and reasonably related to that special statutory justification.

Due process governs decisions to revoke an Order of Supervision.

44. "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.

45. 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. *Zadvydas*, 533 U. S., at 690–92 (discussing constitutional limitations on civil detention).

46. "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). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Id.*, at 333 (citation omitted).

Statute and regulation govern procedures for revoking an Order of Supervision.

47. 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").

48. 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. § 1231(a)(6).

49. 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*, 533 U. S., at 699–700.

50. 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 CFR § 241.4(l)(2); see also § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release" or removal is determined to be reasonably likely in the reasonably foreseeable future). 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).

51. 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 CFR §§ 1.2 & 241.4(*l*)(2), and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). For a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *Ceesay*, 781 F. Supp. 3d, at 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).

52. 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 CFR § 214.4(*l*) & 214.13(i).

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. *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); accord *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 (CA2 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *Morton*, 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 (CA4 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. *Ceesay*, 781 F. Supp. 3d, at 169; *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

Agency Action Unlawfully Withheld and Unreasonable Delayed of Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act

56. The petitioner re-alleges and incorporates by references paragraphs 1-54.

57. The petitioner has "suffer[ed] legal wrong," and has been "adversely affected" and "aggrieved" by the actions of USCIS. 5 U. S. C. § 702.

58. USCIS has "unlawfully withheld" and unreasonable delayed" action on the petitioner's application for permanent residence. § 706(1).

59. As such, the petitioner is entitled to injunctive and declaratory relief, § 703, to compel, § 706(1), the defendant to adjudicate his application for permanent residence within a reasonable timeframe.

COUNT II

Lack of Meaningful Opportunity to Contest Third Country Removal through Claims of Fear of Persecution or Torture, and Claims of Chain Nonrefoulement

60. The allegations in paragraphs 1-54 are realleged and incorporated herein.

61. Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge if they have a fear of persecution or torture in that country. See *Andriasian v. INS*, 180 F. 3d 1033, 1041 (CA9 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Kossov v. INS*, 132 F. 3d 405, 408–09 (CA7 1998) (failure to provide notice of and hearing on deportation to third country was a "fundamental failure of due process"); *see also Hadera v. Gonzales*, 494 F. 3d 1154, 1159 (CA9 2007); *El Himri v. Ashcroft*, 378 F. 3d 932, 938 (CA9 2004); cf. *Protsenko v. U. S. Att'y Gen.*, 149

Fed. Appx. 947, 953 (CA11 2005) (per curiam) (failure to give "proper notice of a potential country of deportation" and a subsequent order of removal to that country may constitute a violation of due process, citing Kossov).

62. Subsection 1231(b)(2) sets out a 4-step process for designating countries of removal. This procedure is also addressed in *Jama v. ICE*, 543 U. S. 335, 338–41 (2005).

63. First, in the removal hearing, subject to § 1231(b)(3), the noncitizen is entitled to select a country of removal. § 1231(b)(2)(A); 8 CFR § 1240.10(f).

64. Second, subject to Subsection 1231(b)(3), the immigration judge or DHS may disregard a designation if the noncitizen "fails to designate a country promptly," the designated country is nonresponsive or unwilling to accept the person, or removal to the designated country would prejudice U.S. interests. § 1231(b)(2)(C).

65. Third, still subject to § 1231(b)(3), the immigration judge may designate, or DHS may select, an alternative country of removal where the person "is a subject, national, or citizen," unless such country is nonresponsive or unwilling to accept the person. § 1231(b)(2)(D).

66. Fourth, subject to § 1231(b)(3), the immigration judge may designate or DHS may select, certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen's port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States; (iv) where the noncitizen was born; (v) having sovereignty over the noncitizen's place of birth at the time of birth; or (vi) where the noncitizen's birthplace is located at the time of the removal order. § 1231(b)(2)(E)(i)-(vi).

67. Only if removal to one of these countries is "impracticable, inadvisable, or impossible" may DHS remove the noncitizen to "another country whose government will accept

[the noncitizen]." § 1231(b)(2)(E)(vii). For this last step, DHS counsel must provide evidence to the immigration court that the foreign government "will accept" the individual. *El Himri,* 378 F. 3d, at 939.

68. Critically, Congress carved § 1231(b)(3) out from the designation statutes, i.e., §§ 1231(b)(1) and (b)(2). See §§ 1231(b)(1)–(2) (providing that both subsections are "subject to paragraph (3)"); *see also Jama*, 543 U. S., at 348 (noncitizens who "face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, see 8 C.F.R. §§ 208.16(c)(4), 208.17(a)"); *Andriasian*, 180 F. 3d, at 1041 (IJ must provide sufficient notice and an opportunity to apply for relief from designated country of removal); *Kossov*, 132 F. 3d, at 405 (due process violation to order deportation to Russia after a claim of asylum as to Latvia where uncounseled noncitizen was provided insufficient notice of Russia possibility).

69. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for protection. *Id.*

70. For these reasons, if DHS designates a new country of removal after the completion

of removal proceedings, the Immigration and Nationality Act (INA), the Due Process Clause, and binding international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim prior to carrying out the deportation.

71. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country. *See Andriasian*, 180 F. 3d, at 1041; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash 2019) ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation."); *Sadychov v. Holder*, 565 Fed. Appx. 648, 651 (CA9 2014) ("However, should circumstances change such that Azerbaijan is the designated country of removal, the agency must provide Sadychov with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from Azerbaijan.").

72. Likewise, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d, at 1010 (merely giving petitioner an opportunity to file a discretionary motion to reopen "is not an adequate substitute for the process that is due in these circumstances;" ordering reopening); *Dzyuba v. Mukasey*, 540 F. 3d 955, 957 (CA9 2008) (remanding to BIA to determinate whether designation is appropriate).

73. Alternatively, a reasonable fear interview before an asylum officer must be provided, along with the right to an immigration judge review, prior to removal to a third alternate country. *Cruz-Medina v. Noem*, — F. Supp. 3d —, No. 25-CV-1768-ABA, 2025 WL 2841488, at

*9 (D. Md. Oct. 7, 2025) ("Accordingly, Petitioner has shown a strong likelihood of success on the merits of his claim that until and unless an immigration judge concurs with the asylum officer's determination that Petitioner lacks a reasonable fear of persecution or torture in Mexico, due process precludes his removal to Mexico."); *Sagastizado v. Noem*, — F. Supp. 3d —, No. 5:25-CV-00104, 2025 WL 2957002, at *16 (S.D. Tex. Oct. 2, 2025) ("For the foregoing reasons, this Court hereby ORDERS that Respondents and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them are hereby EN-JOINED from removing Petitioner from the continental United States until seven (7) days after an Immigration Judge reviews Petitioner's denied Reasonable Fear Interview, and only if the Immigration Judge affirms such denial.")

74. Upon information and belief, ICE, as a matter of practice, does not voluntarily afford this process, and is not currently affording this process to the petitioner.

75. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

COUNT III

Civil Immigration Detention Without Compliance with the Regulatory Review Process

76. The allegation in paragraphs 1-54 are alleged and incorporated herein.

77. Regardless of whether the petitioner's Order of Supervision is governed by 8 CFR § 214.13, or by the default regulations at § 214.4, there is a formal review process that must be followed prior to the revocation of an Order of Supervision under both sets of regulations.

78. Under § 214.13: "Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons

for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." § 214.13(i)(3).

79. Under § 214.4: "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." § 214.4(l)(1).

80. Further, "[i]f the alien is not released from custody following the informal interview provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." § 214.4(*l*)(3).

81. The petitioner has not been afforded any of these processes with counsel present, and thus regulatory procedural rights and his rights to constitutional due process have been violated. *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept.

9, 2025) ("The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process."); id. ("The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands.") (citation omitted).

82. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

83. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody. *Grigorian*, 2025 WL 2604573, at *10 (S.D. Fla. Sept. 9, 2025) ("The failure to provide Petitioner with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause. This completion releases Petitioner's release. Courts around the country have concluded likewise.") (citing, e.g., *Cee-say v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); You v. Nielsen, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, — F. Supp. 3d —, 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bos-tock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Wing Nuen Liu v. Carter*, Case No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025)).

COUNT IV

Civil Immigration Detention in Violation of 8 CFR § 241.13 and Due Process

84. The petitioner's Order of Supervision is governed by the regulations codified at 8

CFR § 214.13.

85. Under those regulations, an Order of Supervision may only be revoked for two reasons: (1) a violation of the conditions of release under said supervision, § 214.13(i)(1); or (2) "on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 214.13(i)(2).

86. The petitioner has not violated the terms of his Order of Supervision.

87. Further, there was no determination by the Government of a significant likelihood of Petitioner's removal in the reasonably foreseeable future to any specific country at the time of the revocation of Petitioner's supervision given that: (1) upon information and belief, Cuba is not currently accepting removals; and (2) upon information and belief relating to ICE's practices, ICE did not secure the acceptance of removal by Cuba or any other third country prior to revoking Petitioner's supervision, as ICE only tries to seek out that approval on an individualized basis after revoking supervision—which, although it may be a lawful practice under 8 CFR § 214.4(l), it is not lawful under § 214.13(i)(2).

88. Thus, Petitioner's current detention is unlawful under binding regulations and the due process clause of the Fifth Amendment to the United States Constitution.

89. As such, the petitioner's ongoing and continued civil immigration detention is unlawful.

90. Therefore, the petitioner is entitled to a writ of habeas corpus ordering that he be immediately released from the respondent's custody.

PRAYER FOR RELIEF

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

1. Accept jurisdiction and maintain continuing jurisdiction of this action;

2. Order Respondents to show cause why the writ should not be granted within three days, and, if necessary, set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;
3. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner Morales from their custody;
4. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Court pending resolution of this matter;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Declare that Petitioner's detention violates the Immigration and Nationality Act;
7. Declare that Petitioner's detention violates the Administrative Procedures Act;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: February 9, 2026

Respectfully submitted,

s/Alexandra Friz-Garcia, Esq.
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Counsel for Petitioner

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

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner/Plaintiff's attorneys and I have discussed the facts within this Petition with the Petitioner/Plaintiff's counsel in stay of removal proceedings before Respondents/Defendants. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Dated: February 9, 2026

s/Alexandra Friz-Garcia, Esq.
Fla. Bar No. 0111496