

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

HUGO HERNANDEZ CEREN,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security,

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

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

ROBERT HAGAN, in his official capacity as
Field Office Director of the Denver Field Office of U.S. Immigration and Customs
Enforcement, Enforcement and Removal Operations,

JUAN BALTAZAR, in his official capacity as
Warden of the Aurora Contract Detention Center

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. The writ of habeas corpus stands as the Constitution's most enduring safeguard against unlawful imprisonment. It ensures that executive detention remains tethered to law—statutory, regulatory, and constitutional.

2. Petitioner Hugo Hernandez Ceren is presently confined at the Aurora Contract Detention Facility in Aurora, Colorado. He was living at liberty under a formally issued Order of Supervision (“OSUP”) from the Department of Homeland Security. He complied with its terms. He reported as required. He structured his life in reliance on the government’s authorization that he remain free under supervision.

3. Petitioner Hugo Hernandez Ceren is confined at the Aurora Contract Detention Facility in Aurora, Colorado. Until November 24, 2025, Petitioner lived at liberty under a formal Order of Supervision (“OSUP”) issued by the Department of Homeland Security (“DHS”). He complied with its terms. He reported as required. He built his daily life around the government’s decision—memorialized in the OSUP—that supervised release, not confinement, was the lawful posture of his custody.

4. On November 24, 2025, Immigration and Customs Enforcement (“ICE”) revoked that OSUP and re-detained Petitioner. The revocation was executed without prior notice, without the informal interview mandated by regulation, without written reasons, without any individualized finding of “changed circumstances” establishing a significant likelihood of removal in the reasonably foreseeable future, and without action by an official vested with revocation authority under the governing regulatory scheme. See 8 C.F.R. §§ 241.4(l), 241.13(i).

5. Compounding the unlawfulness, Petitioner’s removal is barred by a writ of habeas corpus ad testificandum issued by the United States District Court for the District of Colorado in *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.) (Dkt. 275) (the “*Menocal Writ*”), which remains operative by its terms. Petitioner

thus sits in civil immigration custody not to effectuate a removal that can occur in the reasonably foreseeable future, but in defiance of the Executive's own detention regulations and without any hearing before a neutral decisionmaker.

6. The Executive may enforce the immigration laws. It may not rewrite the limits Congress imposed, disregard the procedures DHS promulgated to govern post-order detention and supervised release, or extinguish liberty first and justify later. The writ should issue.

JURISDICTION

7. Petitioner is challenging his unlawful detention by Immigration and Customs Enforcement. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

8. Moreover, Administrative Procedure Act review is cognizable in habeas-form proceedings where agency action unlawfully restrains liberty. *See* 5 U.S.C. § 703 (providing that judicial review may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"); 5 U.S.C. § 702.

9. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

VENUE

10. Venue is proper under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained in this District, his immediate physical custodian is located here, and the operative events occurred here.

PARTIES

11. Petitioner **HUGO HERNANDEZ CEREN** is a citizen and national of El Salvador. He is currently detained by the Department of Homeland Security at the Aurora Contract Detention Facility in Aurora, Colorado. Petitioner's prior administrative proceedings are final. Petitioner has filed a motion to reopen and terminate his removal order and to reinstate his lawful permanent resident status after the criminal conviction that precipitated the loss of that status was vacated based on due process violations; that motion remains pending at the Board of Immigration Appeals ("BIA"). Petitioner is also a named plaintiff in *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.), a class action pending before the Supreme Court concerning GEO's assertion of derivative sovereign immunity. The District of Colorado issued the *Menocal* Writ prohibiting Petitioner's removal "until the need for his live trial testimony ... has resolved." *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.), Dkt. 275. On or about November 24, 2025, ICE arrested and detained Petitioner without a warrant and revoked his OSUP. ICE transported Petitioner through multiple facilities and ultimately confined him at the Aurora Contract Detention Facility, where he remains detained without any hearing before a neutral arbiter and without any meaningful opportunity to contest the revocation and re-detention.

12. Respondent **JUAN BALTAZAR** is named in his official capacity as the warden of the for-profit Aurora Contract Detention Facility. Mr. Juan Baltazar is employed by The GEO Group, the private company that contracts with Immigration and Customs Enforcement to run this facility. As such, he is the immediate physical custodian of Petitioner.

13. Respondent **ROBERT HAGAN** is named in his official capacity as the Field Office Director for Denver ICE. As Field Office Director, Respondent Guadian oversees ICE's enforcement and removal operations in Denver. As such, he is a legal custodian of Petitioner.

14. Respondent **TODD LYONS** is named in his official capacity as Acting Director U.S. Immigration and Customs Enforcement and as such is the legal custodian of Petitioner.

15. Respondent **KRISTI NOEM** is named in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, she is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Baltazar, Lyons, and Hagan. Secretary Noem is the ultimate legal custodian of Petitioner.

16. Respondent **PAMELA BONDI** is named in her official capacity as the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws

pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Petitioner's removal and bond proceedings, and as such, she is Petitioner's legal custodian.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. No administrative remedy provides meaningful relief for Petitioner's claim: he challenges the legality of ICE's revocation of supervised release and his continuing detention under 8 U.S.C. § 1231, including violations of binding detention regulations and the Fifth Amendment.

18. The Supreme Court has recognized that exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of her claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Petitioner raises constitutional claims that the agency cannot redress, and where each day that passes is one in which he is being unconstitutionally deprived of his liberty. Petitioner does not challenge the merits of his removal proceedings or the outcome of any immigration-court decision; he challenges only the legality of his re-arrest and current re-detention.

19. Individuals detained under § 1231 with final orders of removal are not eligible for immigration-court custody redetermination hearings. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). There is no agency mechanism through which a detained individual may contest ICE's unilateral revocation of release or demand a pre-deprivation hearing. See *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (holding that habeas jurisdiction exists where the petitioner challenges the constitutionality of detention itself, not its discretionary aspects).

20. Moreover, Exhaustion is also excused where the pursuit of administrative relief would be futile or inadequate. See *Gibson v. Berryhill*, 411 U.S. 575, 564 n. 14 (1973); *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992). ICE's internal review of its own decision to re-detain the Petitioner would provide no meaningful review, as the same agency that executed the unlawful arrest would adjudicate its legality. Moreover, habeas corpus exists precisely to remedy ongoing unlawful detention when other remedies are unavailable or ineffective. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”).

21. Nor would later administrative or judicial review cure the present constitutional harm. The deprivation occurred at the moment of arrest—when liberty was extinguished without notice or hearing. A subsequent bond hearing, if one were ever granted, would come only after the damage has been done and cannot retroactively supply due process. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (due process requires hearing “at a meaningful time and in a meaningful manner.”). The harm is immediate, structural, and continuing.

22. Habeas exists precisely to test the legality of executive detention when other remedies are unavailable or inadequate. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

FACTS

I. Petitioner's Immigration History, Removal Proceedings, and Motion to Reopen Following Vacatur of Conviction

23. Petitioner is a citizen and national of El Salvador. He entered the United States as a lawful permanent resident in 2005.

24. In 2009, DHS initiated removal proceedings based on a conviction under California Penal Code § 646.9, charging removability under 8 U.S.C. §§ 1227(a)(2)(E)(i) and 1227(a)(2)(A)(iii). An Immigration Judge sustained the charges, terminated Petitioner's lawful permanent resident status, and ordered removal. The BIA dismissed Petitioner's appeal in 2010. Petitioner was removed.

25. In 2017, Petitioner returned to the United States and sought asylum. His application was denied, and his order became administratively final in 2018. Petitioner sought judicial review in the Ninth Circuit; the petition for review was denied on or about March 5, 2020.

26. In September 2021, the California Superior Court vacated Petitioner's underlying conviction pursuant to California Penal Code § 1473.7(a)(1), finding the conviction legally invalid due to prejudicial error affecting his understanding of immigration consequences. Federal courts have recognized that a conviction vacated for such legal defect cannot serve as a basis for removability. See *Wiedersperg v. INS*, 896 F.2d 1179, 1182–83 (9th Cir. 1990); *Nath v. Gonzales*, 467 F.3d 1185, 1187–89 (9th Cir. 2006). Where the legal predicate for removal has been nullified, basic principles of legality demand at least a new proceeding. *Bridges v. Wixon*, 326 U.S. 135, 156 (1945).

27. Accordingly, on February 21, 2023, Petitioner filed a motion to reopen his removal proceedings and to reinstate his status as a lawful permanent resident. That motion remains pending at the BIA.

II. The *Menocal* Litigation and the District of Colorado's Writ Prohibiting Removal

28. Petitioner is a named plaintiff in *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.), a class action against The GEO Group, Inc. ("GEO"), the private contractor that operates the Aurora facility under contract with ICE. The suit alleges forced labor under the Trafficking Victims Protection Act and unjust enrichment under Colorado law related to GEO's work programs and compensation practices.

29. The district court's published *Menocal* opinion is reported at 113 F. Supp. 3d 1125 (D. Colo. 2015). GEO later pursued derivative sovereign immunity arguments under *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940). The case reached the Supreme Court on issues related to derivative sovereign immunity and appealability and remains pending, following oral argument on November 10, 2025.

30. To preserve Petitioner's availability to testify, on June 11, 2020, the District of Colorado issued the *Menocal* Writ prohibiting Petitioner's removal from the United States "until the need for his live trial testimony ... has resolved." *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo. 2015) (Dkt. 275). The writ remains operative on its terms.

III. Release Under Order of Supervision and Full Compliance

31. In January 2020, while detained under 8 U.S.C. § 1231, Petitioner filed a habeas petition in the Northern District of Alabama challenging the legality of his

detention. See *Hernandez-Ceren v. Wolf*, No. 4:20-cv-00112-LSC-SGC (N.D. Ala. Jan. 23, 2020). ICE released Petitioner on December 11, 2020, under an OSUP, and the petition was dismissed as moot on January 29, 2021.

32. Petitioner complied fully with the supervision conditions. He attended appointments and check-ins, maintained stable residence, remained in contact with ICE, worked lawfully with employment authorization, lived with his family, and structured his life in reliance on the government's decision to supervise rather than imprison him.

IV. Revocation of OSUP and Re-Detention Without Process

33. On November 24, 2025, Petitioner appeared at a local ICE office at ICE's request. Without prior notice and without a warrant, ICE revoked Petitioner's OSUP and detained him. He was not afforded an informal interview, and he was not given written reasons for revocation. No individualized finding of changed circumstances was provided. He was transported across multiple facilities in the ensuing days and ultimately confined in Aurora, Colorado, where he remains.

34. Petitioner also had U visa applications pending with U.S. Citizenship and Immigration Services at the time of his arrest; USCIS had not issued receipt notices at that time.

35. Petitioner remains detained despite the *Menocal* Writ barring his removal.

REQUIREMENTS OF 28 U.S.C. 2243

36. Congress directed federal courts to act with dispatch on habeas petitions. 28 U.S.C. § 2243 requires the Court to grant the writ or an order to show cause "forthwith" unless it appears Petitioner is not entitled to relief, and it provides that the return must be

made *within three days* unless the Court allows additional time, not exceeding twenty days, but only for good cause.

37. 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) (citation omitted).

38. “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 [or her] within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination”).

LEGAL FRAMEWORK

I. RESPONDENTS’ REVOCATION OF PETITIONER’S OSUP DISREGARDED THE UNIFIED REGULATORY SCHEME AND IS UNLAWFUL UNDER *ACCARDI*

39. Administrative law does not permit an agency to invoke its own regulations when convenient and ignore them when liberty is at stake. Under the *Accardi* doctrine, an agency must follow its binding rules and procedures, and courts set aside agency action taken in derogation of those rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

40. The regulations governing revocation here are not aspirational. They were promulgated to control post-order detention decisions that implicate physical liberty and

to impose process, accountability, and defined predicates for taking a person back into custody. See 8 C.F.R. § 241.4(l)(1)–(3); 8 C.F.R. § 241.13(i)(2)–(3).

41. Courts addressing 8 C.F.R. § 241.4(l) and related revocation procedures have rejected attempts to fracture the regulatory scheme into separate tracks that dilute process. See *Funes v. Francis*, No. 25-CV-7429, 2025 WL 3,263,896, at *14–15 (S.D.N.Y. Nov. 24, 2025); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 410 (S.D.N.Y. 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161–69 (W.D.N.Y. 2025). Those decisions recognize what the text reflects: 8 C.F.R. § 241.4(l) pairs substantive constraints on revocation authority with an immediate, minimally procedural safeguard—the informal interview—so that revocation is not executed in a vacuum and detention does not become the default simply because ICE elects to make it so.

42. Here, the revocation process described in DHS’s own regulations did not occur. Petitioner received no pre-revocation notice, no written reasons, and no prompt informal interview. The record described in this Petition contains no individualized, regulation-compliant findings establishing that revocation was executed by a properly authorized official and supported by the predicates the regulations require.

43. Under *Accardi*, that is dispositive. Where liberty turns on compliance with binding procedures, an agency’s failure to follow its own rules invalidates the deprivation. See *Accardi*, 347 U.S. at 268; *Ruiz*, 415 U.S. at 235; *Rombot v. Souza*, 296 F. Supp. 3d 383, 388–89 (D. Mass. 2017). Detention predicated upon an unlawful revocation is itself unlawful.

II. RESPONDENTS DEPRIVED PETITIONER OF LIBERTY WITHOUT THE PROCESS THE FIFTH AMENDMENT REQUIRES

44. The Due Process Clause protects “all persons within the United States,” including noncitizens, regardless of immigration status. *Zadvydas*, 533 U.S. at 693. Freedom from physical restraint is at the core of the liberty the Clause protects. *Id.* at 690. Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

45. Petitioner lived at liberty under an OSUP, complied with its terms, and relied on the government’s determination that supervised release was the operative custody status. When the government seeks to extinguish liberty through detention, due process demands notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333.

46. Respondents took Petitioner into custody without advance notice, without stating the grounds, without affording any prompt interview required by regulation, and without any hearing before a neutral decisionmaker. The deprivation was complete when Petitioner’s liberty was terminated at the ICE office and he was transported into confinement. Subsequent internal file reviews by the detaining agency cannot retroactively supply constitutionally adequate pre-deprivation process, particularly where the governing regulations themselves require notice and an opportunity to respond as part of the revocation mechanism.

47. Nor can periodic custody reviews conducted by the detaining agency substitute for due process. They occur after liberty has already been taken and do not provide the kind of neutral adjudication that meaningfully tests whether detention remains authorized and justified.

III. BECAUSE REMOVAL IS LEGALLY FORECLOSED AND RESPONDENTS HAVE NOT MADE THE FINDINGS REQUIRED BY 8 C.F.R. § 241.13(i), CONTINUED DETENTION IS UNAUTHORIZED UNDER ZADVYDAS AND § 1231(a)(6)

A. 8 U.S.C. § 1231 Detention Is Limited to What Is Reasonably Necessary to Effectuate Removal

48. When a noncitizen is ordered removed, the Government must effectuate removal within a 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). Detention is mandatory during that 90-day period. *Id.* § 1231(a)(2). After that period, § 1231(a)(6) authorizes continued detention *only* for the time reasonably necessary to accomplish removal. *Zadvydas*, 533 U.S. at 689. Six months is presumptively reasonable. *Id.* at 701. After six months, once the noncitizen provides “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the Government must rebut with evidence sufficient to justify continued detention. *Id.*

B. The *Zadvydas* Six-Month Period Is Cumulative; It Does Not Reset Through Cycles of Release and Re-Detention

49. Courts have recognized that allowing ICE to reset the *Zadvydas* clock by releasing a person briefly and then re-arresting him would enable indefinite detention through administrative cycling—the very constitutional injury *Zadvydas* forbids. The majority of courts therefore treat the six-month period as cumulative in the revocation context. See *e.g.*, *Nguyen v. Scott*, 2025 WL 2419288, at *13 (W.D. Wash.); *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass.); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex.); *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La.); *Hamama v. Adducci*, 2019 WL 2118784, at *3 (E.D. Mich.); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal.); *Chen v. Holder*, 2015 WL 13236635, at *2 (W.D. La.). *But see Guerra-Castro*

v. Parra, 2025 WL 1984300, at *4 (S.D. Fla.); *Thai v. Hyde*, 2025 WL 1655489, at *3 (D. Mass.).

50. Petitioner was detained for 881 days between 2017 and 2020, and then released on OSUP. ICE re-detained him on November 24, 2025, and he remains confined. Accordingly, the *Zadvydas* presumption has long since expired.

C. 8 C.F.R. § 241.13(i) Imposes Both Substantive Preconditions and Mandatory Procedures for Revocation, and the Government Bears the Burden

51. DHS promulgated § 241.13 to implement *Zadvydas*. See Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967, 56,970 (Nov. 14, 2001). After release on supervision, ICE may revoke and return the person to custody only “if, 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.” 8 C.F.R. § 241.13(i)(2) (emphasis added). Upon revocation, ICE must provide written notice of reasons and promptly conduct an informal interview allowing the person to respond and submit evidence. *Id.* § 241.13(i)(3).

52. Courts applying § 241.13(i) have placed the burden on the Government at revocation and have rejected boilerplate or conclusory assertions as insufficient to establish “changed circumstances” or a “significant likelihood” of removal. See *Escalante*, 2025 WL 2206113, at *3–4; *Balouch v. Bondi*, 2025 WL 2871914, at *2–3 (E.D. Tex.); *Roble v. Bondi*, 2025 WL 2443453, at *3–5 (D. Minn.); *Van Nguyen v. Hyde*, 2025 WL 1725791, at *3 (D. Mass.).

53. The Respondents have not identified any changed circumstances at the time of revocation, provided no pre-revocation notice, conducted no prompt interview, and

supplied no individualized evidence that removal to any country is significantly likely in the reasonably foreseeable future. Those allegations describe a revocation that fails § 241.13(i) on both substance and procedure.

D. The *Menocal* Writ Forecloses Removal and Undermines Any Claim That Detention Serves § 1231's Civil Purpose

54. The core civil purposes recognized for immigration detention are ensuring appearance and effectuating removal. *Zadvydas*, 533 U.S. at 690–92. Where removal is not reasonably foreseeable, detention loses its statutory footing and becomes constitutionally suspect. *Id.* at 699–700.

55. Here, removal is presently barred by an operative writ of habeas corpus ad testificandum in the *Menocal* case. See *Alejandro Menocal et al. v. The GEO Grp., Inc.*, No. 1:14-cv-02887 (D. Colo.) (writ referenced at Dkt. 275). Respondents have identified no individualized “changed circumstances” establishing that removal is significantly likely in the reasonably foreseeable future, and they did not provide the notice and interview that § 241.13(i)(3) requires. Detention in the absence of those predicates is not “reasonably necessary” to effectuate removal within the meaning of § 1231(a)(6) as construed by *Zadvydas*. 533 U.S. at 689.

56. The unlawfulness is structural. Where removal is legally foreclosed and Respondents have not complied with the regulation that conditions revocation on a significant likelihood of removal, detention cannot be justified as an immigration measure tethered to removal. It becomes confinement for confinement's sake.

IV. WHERE DETENTION NO LONGER SERVES A LEGITIMATE NONPUNITIVE OBJECTIVE, SUBSTANTIVE DUE PROCESS FORBIDS CONTINUED IMPRISONMENT

57. Civil detention is constitutionally permissible only when it serves a legitimate, nonpunitive objective, such as ensuring appearance for removal or mitigating danger in a manner tied to the statutory purpose. *Zadvydas*, 533 U.S. at 690–92; *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997).

58. Petitioner's removal from the United States is presently prohibited by a federal writ issued to preserve his availability to testify. In those circumstances, detention does not advance the removal purpose that supplies the statutory justification for post-order confinement. When detention no longer serves its lawful objective, continued confinement becomes punitive in operation and constitutionally infirm. *Zadvydas*, 533 U.S. at 699–700.

V. RESPONDENTS' ACTIONS ARE ARBITRARY AND CAPRICIOUS UNDER THE APA

59. The APA requires courts to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

60. Re-detaining Petitioner after years of compliant supervised release, without the findings and procedures required by 8 C.F.R. § 241.13(i)(2)–(3) and 8 C.F.R. § 241.4(l), and in the face of an operative writ barring removal, is agency action not in accordance with law. It is arbitrary and capricious because Respondents disregarded the regulatory predicates that govern revocation and failed to articulate a reasoned basis consistent with the detention statute's limited purpose.

CLAIMS FOR RELIEF

COUNT I:

Violation of Fifth Amendment Procedural Due Process Protections

61. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

62. Procedural due process requires notice and a meaningful opportunity to be heard before the Government may deprive an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

63. One of the first inquiries in any case of violation of procedural due process is whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972). Reliance on government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

64. Petitioner has a substantial, legally protectable liberty interest, created by his reliance on his OSUP and the government's related assurances, at stake. ICE revoked Petitioner's Order of Supervision and re-detained him without any notice of the grounds, without an opportunity to contest revocation, and without access to a neutral decisionmaker. No pre-deprivation procedures were observed.

65. The periodic 90-day custody reviews required under 8 U.S.C. § 1231 are not an adequate substitute. They occur only after liberty has already been taken; they are conducted by the same agency effecting detention, and they do not provide a neutral forum.

66. The deprivation of liberty was therefore procedurally unlawful from the moment of revocation. The risk of erroneously depriving Petitioner of that interest is severe, as he is separated from his family, community, and work indefinitely, and has been thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process. By failing to provide Petitioner with notice, an opportunity to be heard, and meaningful review, Respondents violated the Fifth Amendment.

COUNT II

Violation of Fifth Amendment under the *Accardi* Doctrine

67. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

68. Under the *Accardi* doctrine, the government and agencies must follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). Where a regulation governing agency behavior has been promulgated, citizens and noncitizens alike are entitled to “that due process required by the regulations.” *Id.* at 268.

69. DHS’s regulations strictly limit the revocation of release under an Order of Supervision. Revocation may occur only if an authorized official makes express findings of “changed circumstances” establishing a “significant likelihood of removal in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Moreover, DHS must provide written notice of the reasons for revocation and promptly conduct an interview affording the detainee a chance to respond. 8 C.F.R. § 241.13(i)(3).

70. None of these requirements were satisfied. Petitioner was re-detained without prior notice, no individualized finding of changed circumstances was made, no evidence of foreseeable removal exists, and no prompt post-revocation interview was provided. “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).

71. Because Respondents failed to follow the regulations that govern their own conduct, revocation of Petitioner’s OSUP and his continuing detention are unlawful under *Accardi*.

COUNT III

Violation of Fifth Amendment Substantive Due Process Protections

72. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

73. Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint “lies at the heart of the liberty that the Due Process Clause protects.” *Zadvydas*, 533 U.S. at 690. The Constitution forbids the Government from detaining a person where detention no longer serves a legitimate, nonpunitive purpose.

Zadvydas v. Davis, 533 U.S. 678, 690–92 (2001). Immigration detention is permissible only to prevent danger to the community or ensure appearance for removal.

74. Petitioner does not present a danger to the community. He cannot lawfully be removed from the United States. Detention therefore serves neither recognized purpose.

75. In these circumstances, continued confinement is unreasonable, and contrary to the substantive protections of the Due Process Clause. The Fifth Amendment does not permit the Government to imprison Petitioner indefinitely when removal is legally foreclosed and no legitimate governmental interest is advanced.

COUNT IV

Violation of the Administrative Procedure Act

76. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

77. The Administrative Procedure Act provides that courts “shall . . . hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

78. At the time of Petitioner’s 2025 arrest, Petitioner had been released under an OSUP. Detaining Petitioner despite no changed circumstances suggesting he presents any risk of flight or threat to public safety, and his continued detention after his removal has been legally barred, is arbitrary, capricious, and an abuse of discretion. 8 C.F.R. § 241.13(i)(2)-(3).

79. The arbitrary and capricious detention of Petitioner, despite his prior valid grant of an OSUP and the legal prohibition on his removal from the United States, causes

him irreparable harm with each day he remains detained. For the reasons articulated above, this court should find that any decision to detain Petitioner is arbitrary, capricious, and unsupported by substantial evidence. See 5 U.S.C. §§ 706(2)(A), (E) (The 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,” or “unsupported by substantial evidence.”).

PRAYER FOR RELIEF

Petitioner respectfully requests that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension, and set the matter for prompt hearing;
- C. Prohibit Petitioner’s removal from the United States and transfer outside the District of Colorado during the pendency of this action;
- D. Declare that Petitioner’s arrest and continued detention are unlawful;
- E. Grant the writ of habeas corpus and order Petitioner’s immediate release from ICE custody;
- F. In the alternative, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention;

- G. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- H. Grant any other and further relief that this Court deems just and appropriate.

Dated: February 12, 2026

Respectfully submitted,

s/ Luis Cortes Romero
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I represent Petitioner, Hugo Hernandez Ceren, who is currently detained at the immigration detention center in Aurora, Colorado, and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: February 12, 2026

s/ Luis Cortes Romero

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