IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00581-GPG

ISRAEL GUERRA GUTIERREZ,

Petitioner,

v.

DAWN CEJA, Warden, Aurora ICE Processing Center;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and
PAM BONDI, Attorney General of the United States,

in their official capacities,

Respondents.

FIRST AMENDED PETITION FOR HABEAS CORPUS

INTRODUCTION

1. Petitioner Israel Guerra Gonzalez ("Petitioner" or "Mr. Guerra") is a native and citizen of Cuba in the custody of Immigration and Customs Enforcement ("ICE") at the Aurora ICE Processing Center (AIPC), operated by GEO Group, Inc.
2. Mr. Guerra originally entered the U.S. in 1998, was granted status of a lawful permanent resident ("LPR"), which was subsequently revoked due to a criminal conviction.
3. After revoking his LPR status, Mr. Guerra was placed in removal proceedings, and an order of removal was entered on September 7, 2007. Mr. Guerra was subsequently released from detention and placed on an Order of Supervision ("OSUP") on July 3, 2014. Ex. 6. On or about October 27, 2025, the Department of Homeland Security ("Department" or "DHS") mailed Mr. Guerra a "Call-In Letter" requesting he appear on December 24, 2025, at 10:00 a.m. at 935 State Highway 67, Florence, Colorado, at which Mr. Guerra was detained; and he is now in the custody and control of ICE at the AIPC. Ex. 7.
4. ICE failed to provide Mr. Guerra with a reason that his OSUP was revoked, and Mr. Guerra maintains that he did not violate the conditions of OSUP, there has been no change in circumstances, and the original purpose has not been served.
5. While detained, ICE officers have requested that Mr. Guerra accept a voluntary removal to Mexico; however, ICE has failed to produce any documentation that Mexico has agreed to accept Mr. Guerra pursuant to 8 U.S.C. 1231(b)(2)(E)(vii).
6. Because the U.S. has no diplomatic relationship with Mr. Guerra's home country, Cuba, his removal from the U.S. is not foreseeable, and he should be released from detention.
7. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the

Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.

8. Petitioner brings this action for injunctive, habeas, and declaratory relief and requests an order for Respondents to release him.

JURISDICTION

9. Petitioner is in the physical custody of Respondents, as he is detained at the Aurora ICE Processing Center in Aurora, Colorado, which is under the direct control of Respondents and their agents.

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

12. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The REAL ID Act of 2005, which eliminated habeas corpus jurisdiction over final orders of removal, deportation, and exclusion and consolidated such review in the court of appeals, did not impact the ongoing availability of habeas corpus filed in the district court to challenge the length or conditions of immigration detention. See H.R. REP. No. 109-72, at 175 (2005), ("Moreover, section 106 would not preclude habeas review

over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders.") reprinted in 2005 U.S.C.C.A.N. 240, 300; see *Hernandez v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005); *Sissoko v. Rocha*, 412 F.3d 1021, 1033 (9th Cir. 2005); *Kellici v. Gonzales*, 472 F.3d 416 (6th Cir. 2006).

VENUE

13. Venue is proper in this district because Respondent Dawn Ceja is Petitioner's immediate custodian under 28 U.S.C. § 1391(e)(1), and Respondents are officers of United States agencies. In addition, Petitioner currently resides within this District, and there is no real property involved in this action. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Colorado, the judicial district in which Petitioner is currently in custody. Finally, venue is proper in this District because Respondents are officers, employees, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District of Colorado. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) 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 that Respondents file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. "The Great Writ" has been referred to as "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).

PARTIES

16. Petitioner is a native and citizen of Cuba. Petitioner is currently detained at the Aurora ICE Processing Center in Aurora, Colorado. He is in the custody, and under the direct control, of Respondents and their agents.
17. Respondent Dawn Ceja is the Warden of the Aurora ICE Processing Center, and he has immediate physical custody of Petitioner pursuant to the facility's contract with United States Immigration and Customs Enforcement to detain noncitizens. Thus, Respondent Juan Baltasar is a legal custodian of Petitioner.
18. Respondent Todd Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Todd Lyons is a legal custodian of Petitioner and has authority to release him.
19. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Kristi Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the agency responsible for Petitioner's detention. Respondent Kristi Noem is a legal custodian of Petitioner.
20. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has

the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Pam Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

21. Petitioner is a 54-year-old citizen of Cuba. Petitioner came to the United States in 1998, fleeing Cuba based on his fear of persecution there. Petitioner arrived in the U.S. and requested parole. Petitioner was subsequently released from detention on parole on November 12, 1998. Ex. 5.
22. Petitioner has four U.S. citizen children and a U.S. citizen wife who all depend on him for emotional and economic support. Ex. 4.
23. Petitioner applied to adjust status to that of a lawful permanent resident pursuant to the Cuban Adjustment Act ("CAA") and was granted said status. However, Petitioner's LPR status was revoked after he pled guilty to conspiracy to induce aliens to enter the U.S. (8 U.S.C. § 1324(a)(1)(A)(v)(I)) and unauthorized entry in Cuban territorial waters (50 U.S.C. § 192) on June 24, 2008.
24. Due to the prior Order of Removal, the Department placed Petitioner on an Order of Supervision on July 3, 2014. Petitioner successfully complied with all terms of the Order of Supervision, including an annual personal reporting requirement. Ex. 6.
25. On or about October 27, 2025, DHS mailed Mr. Guerra a "Call-In Letter" requesting he appear on December 24, 2025, at 10:00 a.m. at 935 State Highway 67, Florence, Colorado 81226. Ex. 7. On or about December 24, 2025, Mr. Guerra appeared for his appointment and was re-detained; Mr. Guerra is currently in the custody and control of ICE at the AIPC.

26. To date, ICE has not issued an explanation as to why it revoked Petitioner's OSUP, nor has ICE given Petitioner an opportunity to respond the revocation of OSUP.
27. While detained, ICE officers have requested that Petitioner accept a voluntary removal to Mexico; however, ICE has failed to produce any documentation that Mexico has agreed to accept Petitioner pursuant to 8 U.S.C. 1231(b)(2)(E)(vii). *See also, Jama v. Immigration and Customs Enforcement* 543 U.S. 335 (2005).

LEGAL FRAMEWORK

28. The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001).
29. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. See *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).
30. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

31. 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").

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

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

34. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order ... or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); see also *id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts question whether these regulations are ultra vires of statutory authority. *See*, *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).

35. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director or a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).
36. Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).
37. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704. 34. Final agency actions are those (1) that "mark the consummation of the agency's decision making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).
38. ICE's revocation of an Order of Supervision is a final agency action subject to this Court's review.

39. The revocation here marked the consummation of ICE's purported decision making process regarding Petitioner's custody.

40. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

41. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

42. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

43. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an *Accardi* violation. See *Ceesay v.*

Kurzdorfer, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

COUNT ONE

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

44. The allegations in the above paragraphs are realleged and incorporated herein.
45. After Petitioner was granted withholding of removal, ICE issued Petitioner an order of supervision and found that he is neither a danger to the community nor a flight risk.
46. When Respondents revoked the order of supervision, Petitioner had complied with every condition of the order. No change in circumstances warranted the order's revocation.
47. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.
48. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT TWO

Violation of the Fifth Amendment Right of the U.S. Constitution: Procedural Due Process

49. The allegations in the above paragraphs are realleged and incorporated herein.
50. *Mathews v. Eldridge*, 424 U.S. 319, 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.
51. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.
52. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.
53. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This

waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.

54. For these reasons, revoking Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT THREE

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

55. The allegations in the above paragraphs are realleged and incorporated herein.

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

57. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

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

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

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

61. Even if regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, Respondents did not comply with them. Respondents could not make findings that the purposes of release had been served or that it was appropriate to enforce a removal order, because it had yet to make final arrangements for Petitioner's removal, nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

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

COUNT FOUR

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

63. The allegations in the above paragraphs are realleged and incorporated herein.

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

65. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious: Respondents failed to provide justification or explanation as to why Petitioner's release on an order of supervision was no longer appropriate. The only documents Petitioner was provided was a document that stated he would be removed to Mexico. However, Respondents provided no evidence that Respondents had acquired diplomatic assurances from Mexico that Petitioner would not be persecuted or tortured there.

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

67. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner would comply with a demand to appear for removal without detention. Petitioner has never violated a condition of his Order of Supervision and no new facts or changed circumstances suggest he would.

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

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

70. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, who is neither a flight risk nor a danger to the community, including financial and administrative costs incurred by the agency due to unnecessary detention.

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

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

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

COUNT FIVE

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

74. The allegations in the above paragraphs are realleged and incorporated herein.

75. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

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

77. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances" *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

78. Petitioner is far beyond the 90-day removal period, and, in fact, was released on an OSUP with annual check-ins under this exact statute. The U.S. has not improved its diplomatic relations with Cuba, in fact, the diplomatic relations are notably worse.
79. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)
80. Respondents' revocation of Petitioner's order of supervision was based on ultra vires regulations and should be held unlawful and set aside.

COUNT SIX

Ultra Vires Action

81. The allegations in the above paragraphs are realleged and incorporated herein.
82. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.
83. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT SEVEN

Violation of the *Accardi* Doctrine

84. The allegations in the above paragraphs are realleged and incorporated herein.
85. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

86. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); see also, e.g., *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

87. Respondents also violated agency instructions in Petitioner's release notification to give an opportunity to prepare for an orderly departure when they revoked Petitioner's order without advance notice.

88. Under *Accardi*, Respondents' revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court:

(1). Exercise jurisdiction over this matter;

(2). Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

(3). Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* Doctrine;

(4). Order Petitioner's immediate release;

(5). Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6). Order such other relief this Court may deem just and proper.

Respectfully submitted,

/s/ Leanne Reetz Hightower
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Counsel for Petitioner

Dated: March 11, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, **Israel GUERRA GONZALEZ**, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing First Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 11th day of March 2025.

/s/ Leanne Reetz Hightower

Leanne Reetz Hightower