

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Alejandro Osvaldo Ghysels Reales

Petitioner,

v.

Garrett J. RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela J. BONDI, U.S. Attorney General, Department of Justice; Todd LYONS, Acting Director, Immigration and Customs Enforcement; WARDEN of Florida Soft Side South Detention Center in Ochopee, Florida

Respondents.

Case No. 2:26-cv-425

Petition for Writ of Habeas Corpus and Order to Show Cause Within Three Days

INTRODUCTION

1. This case challenges the unlawful detention of Alejandro Osvaldo Ghysels Reales (“Petitioner”), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at the Florida Soft Side South Detention Center, also known as “Alligator Alcatraz”. Petitioner is neither a flight risk nor a danger to the community. Even more, he was granted deferred action by U.S.

Citizenship and Immigration Services (“USCIS”) after they determined that his petition for U Nonimmigrant Status was bona fide. Still, on February 2, 2026, ICE detained Petitioner without notice or an opportunity to be heard, without findings required by law, and in violation of its own regulations and procedures.

2. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on October 12, 2010, under an order of supervision. For the last 15 years, Petitioner has fully abided by the order’s terms, including not committing any crimes and attending regularly scheduled check-ins with ICE.

3. Petitioner’s long-time wife, four children, and three grandchildren all reside in the United States and are U.S. citizens and U.S. lawful permanent residents. Petitioner has been lawfully employed and providing financially for his family since he was released from ICE detention in 2010. He is also an ordained priest who has spent decades giving back to the community and organizing activities for needy families.

4. On June 26, 2024, USCIS issued Petitioner a Bona Fide Determination of his petition for U-Nonimmigrant Status and determined that he warranted a favorable exercise of discretion, granting him deferred action status and employment authorization.

5. Nonetheless, at a regularly scheduled check-in with ICE on February 2, 2026, Respondents detained Petitioner and kept him overnight at the ICE-ERO Miramar Center. The following day, ICE shackled him and transported him to the Florida Soft Side South Detention Center, where he remains detained today.

6. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act ("INA") and its implementing regulations, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

9. 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 Middle District of Florida, the judicial district in which Petitioner currently is

detained. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

PARTIES

12. Petitioner Alejandro Osvaldo Ghysels Reales is a citizen of Argentina who has resided in the United States for approximately 25 years.

Prior to Petitioner's detention on or about February 2, 2026, he was residing in Hollywood, Florida. Petitioner is currently detained at Florida Soft Side South Detention Center.

13. Respondent Garrett J. Ripa is the ICE Field Office Director for Enforcement and Removal Operations ("ERO") for the State of Florida, Puerto Rico, and the U.S. Virgin Islands, which includes Moore Haven, Florida. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

16. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of

certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

17. Respondent Warden of Florida Soft Side South Detention Center is the Warden where Petitioner is currently detained. He is an immediate custodian of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

18. Petitioner is a 61-year-old citizen of Argentina. Ex. 1, Argentinian Passport. He came to the United States on or around October 2, 2000, over 25 years ago, as a visitor with a visa waiver. He has resided in the United States continuously since his entry in 2000.

19. In late 2009, Petitioner was detained by immigration officials and placed in removal proceedings. On March 3, 2010, Petitioner was ordered removed from the United States. Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"), but the appeal was dismissed on June 2, 2010. Ex. 2, EOIR Automated Case Information.

20. On October 12, 2010, ICE released Petitioner under an order of supervision because it was unable to execute his removal during the 90-day period prescribed by law. Ex. 3, Order of Supervision. Since ICE released Petitioner, he has complied with all conditions of the order for over 15 years, including not committing any crimes and reporting for periodic check-ins with

ICE. **Ex. 4**, ICE Personal Report Record. No circumstances have changed that make Petitioner a flight risk or danger to the community. Petitioner has never been arrested other than by ICE officials and has no criminal history in the United States or any other country.

21. Petitioner's entire immediate family resides in the United States. Petitioner's wife of 37 years, Lidia Noemi Tocci, is a lawful permanent resident. **Ex. 5**, Petitioner's Marriage Certificate and Petitioner's wife's Green Card. Petitioner and his wife have 4 children together: G [REDACTED] L [REDACTED] [REDACTED], and N [REDACTED] are U.S. citizens, and G [REDACTED] is a lawful permanent resident. **Ex. 6**, Petitioner's Children's Birth Certificates and Proof of Lawful Status. Petitioner is extremely close to his family, and they count on him for physical, emotional, and financial support.

22. Petitioner is also a long-time pastor with the New Apostolic Church in Davie, Florida. **Ex. 7**, Certificate of Ordination. He and his family are very active members of their church and Petitioner dedicates a lot of his time to serving his community.

23. On March 24, 2020, Petitioner applied for a U-1 nonimmigrant visa with USCIS based on credible threats to his then 11-year-old daughter. On June 26, 2024, USCIS issued Petitioner a Bona Fide Determination ("BFD") Notice, stating that his U-visa petition is bona fide and he warrants a favorable

exercise of discretion. **Ex. 8**, BFD Notice. This BFD provided Petitioner with employment authorization and deferred action, which the notice describes as “an act of administrative convenience to the government which gives cases lower priority for removal.” *Id.* Because the yearly statutory cap on U visas was reached, Petitioner is on a waiting list for a U visa to become available, at which point USCIS will make a final determination about his eligibility for the visa.

24. Additionally, On December 6, 2021, Petitioner’s adult U.S. citizen daughter, Georgina Analy Ghysels, filed an I-130, Petition for Alien Relative, for Petitioner. This petition was approved by USCIS on March 21, 2023. **Ex. 9**, I-130 Approval Notice.

25. Petitioner appeared at his regularly scheduled check-in on February 2, 2026, at the Miramar ICE-ERO Center. He presented a complete Form I-246, Application for a Stay of Removal, along with the appropriate fee to the ICE officer reviewing his case. **Ex. 10**, ICE Stamped Stay of Removal.

26. The ICE officer asked Petitioner multiple times to confirm his physical address and phone number. He then asked Petitioner to step outside the building, where he waited for about 30 minutes until he was called back inside. Petitioner was then searched and told to remove all his outer clothing and personal possessions and place them into a plastic bag. The ICE officer then again reviewed Petitioner’s biographical information.

27. Petitioner was never told why he was being detained, but it was clear that he was not allowed to leave the building. He was forced to stay overnight at the Miramar ICE-ERO Center in a makeshift holding cell, where he slept on concrete blocks with no blankets.

28. The following day, on February 3, 2026, ICE officers shackled Petitioner at the hands and feet and transported him to the Florida Soft Side South Detention Center, where he is currently detained. Although he does not appear in the ICE Detainee Locator, undersigned counsel and Petitioner's family have communicated continuously with Petitioner and he has confirmed that he remains at the Florida Soft Side South Detention Center.

29. Upon information and belief, at no time prior to or following Petitioner's arrest did ICE provide him with written notice of the revocation of his release, a reason for the revocation, or any interview to address it. On February 11, 2026, undersigned counsel reached out to ICE-ERO Miami by email requesting a copy of the Notice of Revocation issued to Petitioner. **Ex. 11**, Email Request to ICE-ERO Miami. To date, Respondents have not provided Petitioner nor undersigned counsel with a copy of the Notice of Revocation.

30. Additionally, upon information and belief, Petitioner's deferred action status following USCIS's issuance of a BFD on his U-visa application remains in effect and has not been revoked.

31. Finally, Miami ICE-ERO has communicated with Mr. Pierce E. Rivera, the attorney that prepared Petitioner's Stay of Removal, and they have stated that the stay is "presently under review." Ex. 12, Email Response from ICE-ERO Miami regarding Petitioner's location and pending stay of removal.

LEGAL FRAMEWORK

A. Order of Supervision Revocation

I. Due Process Governs Decisions to Revoke an Order of Supervision

32. The Due Process Clause applies "to all 'persons' within the United States...whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "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.

33. Under substantive due process doctrine, a restraint on liberty, like the revocation of a noncitizen'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 v. Davis*, 533 U.S. 678, 690-92.

34. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a

noncitizen's order of supervision, notwithstanding his deferred action status and continued compliance with his 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).

II. Statutes and Regulations that Govern Procedures for Revoking an Order of Supervision

35. A noncitizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). A noncitizen may only be detained past the 90-day removal period ... 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).

36. 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)]." *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

37. Specific regulations give additional reasons, beyond those listed at § 1231(a)(6), why an order of supervision may be revoked. Section § 241.4(l)(2) states that release may be revoked when "(1) the purposes of release have been served; (2) the [noncitizen] violates any condition of release; (3) it is appropriate

to enforce a removal order . . . ; or (4) the conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Further, Section 241.13(i) permits revocation of release “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i). Several courts have found that when ICE revokes the release of a noncitizen who has been ordered removed to effectuate their removal, “it is [ICE’s] burden to show a significant likelihood that the [noncitizen] may be removed.” *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. 2025); *Escalante v. Noem*, No. 9:25-CV-00182, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *Sardinas v. Noem*, No. 2:26-CV-00067, 2025 WL 232405, at *3 (M.D. Fla. Jan. 29, 2026).

38. Upon revocation of an order of supervision, ICE must give the noncitizen notice of the reasons for the revocation and a *prompt* interview to respond to the reasons for the revocation. 8 C.F.R. § 241.4(l)(1). (emphasis added). Additionally, the 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.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2)). If the field office

director or a delegated official intends to revoke release, they must first find that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate.” 8 C.F.R. § 241.4(l)(2).

III. The APA Sets Minimum Standards for Final Agency Action

39. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. Final agency actions are those (1) that “mark the consummation of the agency’s decisionmaking 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).

40. ICE’s revocation of an order of supervision is a final agency action subject to this Court’s review. The revocation here marked the consummation of ICE’s decision-making process regarding Petitioner’s custody.

41. 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.

IV. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

42. 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 BIA failed to follow procedures governing deportation proceedings); *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.”).

43. *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. *Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual).

44. Courts have also held that “where an immigration ‘regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute,’ like the opportunity to be heard, ‘and [ICE] fails to adhere to it, the challenged [action] is invalid.” *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass 2017) (quoting *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993)); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025).

B. Deferred Action Status Following a Bona Fide Determination of a U Nonimmigrant Visa Application

45. U Nonimmigrant visas provide a path to legal status for noncitizen victims of certain serious crimes who have “suffered substantial physical or

mental abuse,” “possess[] information concerning [that] criminal activity,” and have helped law enforcement investigate or prosecute those crimes. 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14. There is a statutory cap of 10,000 U visas that may be issued each year, “a figure routinely exceeded by the number of petitions filed.” *Patel v. Noem*, 788 F. Supp. 3d 950, 953 (N.D. Ill. 2025) (citing 8 U.S.C. § 1184(p)(2)(A)). USCIS places petitioners who qualify for a U visa, but cannot obtain one due to the statutory cap, on a waiting list, giving highest priority to the oldest petitions. 8 C.F.R. § 214(d)(2).

46. In 2021, USCIS implemented the BFD process to deal with the growing backlog of petitions. USCIS first considers whether the application was made in “good faith; without fraud or deceit,” and then whether the applicant “poses a risk to national security or public safety [or] otherwise merits a favorable exercise of discretion. *Kothari v. Dir. of United States Citizenship & Immigr. Servs.*, No. 3:24 C 50101, 2025 WL 732075, at *3 (N.D. Ill. Jan. 24, 2025); USCIS Policy Alert (June 14, 2021). If the petitioner meets this threshold, the applicant is granted deferred action and work authorization. *Id.*

47. Courts across the nation have held that a grant of deferred action is an “affirmative immigration benefit” that effectively makes it unlawful for a removal order to be executed while the noncitizen has deferred action status. *Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901, 908 (W.D. Wash. July 24, 2025);

Enriquez-Perdomo v. Newman, 54 F. 4th 855, 863-64 (6th Cir. 2022); *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201, 2025 WL 3012789, at *5 (S.D. Fla. Oct. 28, 2025); *Espinoza Cruz v. English*, No. 3:25-CV-919, 2025 WL 3676992, at *4 ((N.D. Ind. Dec. 18, 2025).

48. The Eleventh Circuit has further explained that deferred action status “amounts to, in practical application, a reprieve for deportable [noncitizens]. No action [] will be taken against a[] [noncitizen] having deferred action status.” *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1258 n. 2 (11th Cir. 2012); *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983). Thus, by granting Petitioner deferred action status through the U-visa BFD process, Respondents acknowledged that they would take no action to remove him while his deferred action was in effect. To date, Petitioner’s deferred action status has not been revoked.

CLAIMS FOR RELIEF

Count One

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

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

50. When ICE issued Petitioner an order of supervision, it found that he is neither a danger to the community nor a flight risk. When Respondents revoked the order of supervision, Petitioner had complied with every condition

of the order and there was no change in circumstances that warranted the order's revocation.

51. Therefore, Petitioner's detention does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. Importantly, Respondents' sole possible basis for detaining Petitioner is that it may do so in order to remove him. However, as mentioned above, because Petitioner's deferred action status prevents his removal, his detention is unlawful.

52. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision while he had deferred action status, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

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

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

54. *Mathews v. Eldridge* 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. *Mathews*, 424 U.S. at 333.

55. The first factor, the private interest at issue, favors Petitioner. Detention, even civil immigration confinement, infringes on a fundamental protected liberty interest. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Notably, “individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.” *Palencia v. Hermosillo*, No. 2:25-CV-2669, 2026 WL 125141, at *6 (W.D. Wash. Jan. 16, 2026) (citing *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093, (E.D. Cal. Mar. 3, 2025)). Petitioner was initially released pursuant to an order of supervision and was re-detained 15 years later when he appeared for a routine check-in with ICE. Further, he has been granted deferred action, which several recent court decisions have confirmed is “an immigration benefit that prevents removal.” *Ayala v. Bondi*, No. 2:25-CV-01063, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025). Thus, Petitioner risks the loss of a significant liberty interest and due process is required if it is to be deprived.

56. 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, (1) the statute specifies the limited number of reasons why an order of supervision may be revoked; and (2) the

regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so. Here, Respondents violated those laws when they detained Petitioner without notice of the revocation of his release or an opportunity to raise any challenges to the revocation.

57. Importantly, because his grant of deferred action prevents Petitioner's removal while it remains unrevoked, the risk of erroneous deprivation in the absence of a pre-detention hearing is not just high — it is certain. *Nevarez Jurado v. Freden*, 2025 WL 3687264, at * 11 (W.D.N.Y. Dec. 19, 2025) (“Because that grant of deferred action affirmatively prevents [petitioner's] removal while it remains unrevoked ... and because it appears that [petitioner] has not received any opportunity to raise that argument, the second *Mathews* factor also weighs decisively in favor of concluding that his ongoing detention violates his due process rights.”).

58. 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 release, it is more likely to waste limited financial and administrative resources on the unnecessary detention of people who are neither flight risks nor dangerous and who ICE previously found it appropriate to release back into the community. Further, several courts have held that the “government's interest in re-detaining noncitizens previously

released without a hearing is low.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025). Even more, here, Petitioner was granted deferred action as a result of USCIS’s determination that his U-visa is bona fide and that he warrants a favorable exercise of discretion.

59. For these reasons, revoking Petitioner’s order of supervision without providing notice and a meaningful opportunity to respond, particularly with arguments related to his deferred action status, violated his procedural due process rights 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

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

61. 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). 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).

62. 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.

63. The revocation was also not in accordance with the INA and its implementing regulations governing how and under what circumstances an order of supervision may be lawfully revoked, as discussed above.

64. Respondents did not inform Petitioner of the reason for his detention when they detained him and, to date, Petitioner has not been provided with an official Notice of Revocation of release. 8 C.F.R. § 241.13(i)(3); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10 (D. Or. Aug. 21, 2025) (finding that notice two days after revocation violated the regulation).

65. Respondents cannot make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he has not. Respondents also cannot make findings that Petitioner is dangerous or unlikely to comply with a removal order because he has no criminal history and has been consistently attending all his check-ins with ICE since he was released on an order of supervision 15 years ago.

66. Further, to date, Respondents have not met their burden of showing that there is a significant likelihood that Petitioner may be removed in the reasonably foreseeable future. Petitioner has been on an order of

supervision for the last 15 years and during that time, Respondents have not been able to effectuate his removal. Even more, as of 2024, Petitioner was granted deferred action status following a BFD by USCIS of his pending U-visa application. As mentioned above, the grant of deferred action prevents Petitioner's removal while it remains unrevoked.

67. Finally, over two weeks have passed since Respondents detained Petitioner and they have not provided him with an informal interview to discuss the revocation of his release, as required by regulation. 8 C.F.R. § 241.13(i)(3).

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

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

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

70. 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).

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

72. 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). 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.

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

74. Thus, Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

Count Five
Violation of the *Accardi* Doctrine

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

76. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *United States ex rel. Accardi v. Shaughnessy*, 16 347 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").

77. As mentioned above, Respondents violated agency regulations and procedures governing how and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. Specifically, Petitioner was given a reason for the revocation of his release, and to date, he has not been provided an informal interview to respond to the reason for the revocation. These procedures are meant to protect Petitioner's due process rights.

78. Under *Accardi*, Respondents' revocation of the order of supervision should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;

- b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Declare that Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- e. Grant a writ of habeas corpus requiring that Respondents immediately release Petitioner;
- f. Award Petitioner costs and reasonable attorneys' fees; and
- g. Grant any other and further relief that this Court may deem just and proper.

DATED this 18th of February, 2026.

Respectfully submitted,

/s/ Juliana M. Lopez
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Attorney for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 18th of February, 2026.

/s/ Juliana M. Lopez
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