

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Henry Enrique LEIVA MURILLO,	)	
Petitioner	)	
	)	
vs.	)	PETITION FOR WRIT OF
	)	HABEAS CORPUS
Warden, IMMIGRATION AND	)	
CUSTOMS ENFORCEMENT	)	
MIRAMAR SUB OFFICE;	)	
	)	
Miami Field Office Director,	)	
Enforcement and Removal Operations,	)	
IMMIGRATION AND CUSTOMS	)	
ENFORCEMENT	)	
	)	
Pamela Bondi, ATTORNEY GENERAL;	)	
	)	
AND	)	
	)	
Kristi Noem, SECRETARY OF THE	)	
DEPARTMENT OF HOMELAND	)	
SECURITY,	)	
Respondents.	)	

INTRODUCTION

1. This case challenges the unlawful detention of Henry Enrique Leiva Murillo (Petitioner), who is currently in the custody of Immigration and Customs Enforcement (ICE) at the Miramar Sub Office in Miramar, Florida. Petitioner has a final order of removal but was deferred action by USCIS upon approval of his I-360 Self Petition as the abused spouse of a US Citizen (VAWA Self Petitioner). He was granted deferred action on December 11, 2024 for a period of fifteen months. *See I-360 Approval Notice and Grant of Deferred Action as Exhibit 1*. The notice specifically states that he is

eligible to request an extension of his Deferred Action and the procedures for doing so.

The Petitioner was in the process of preparing an extension request upon his detention.

2. The Petitioner was previously removed at the border and reentered the United States twice without inspection. ICE intends to reinstate the Petitioner's prior removal order. However, following his grant of deferred action, the Respondent has traveled outside of the United States with a grant of advanced parole and his last entry into the United States was lawfully as he was paroled into the country by Customs and Border Patrol. These prior removal orders were all known to USCIS prior to his grant of deferred action. The grant specifically states that "USCIS does not anticipate instituting action for removal at this time."
3. The Petitioner has been married to his US Citizen spouse since 2016. Together they share two minor daughters. In 2021, he submitted a Self-Petition to USCIS as an abused spouse of a US Citizen pursuant to the provisions of the Violence Against Women Act (VAWA) enacted as Title IV of the Violent Crime Control and Law Enforcement Act of 1994. On August 19, 2025, the Petitioner filed for divorce from his abusive spouse. After an attempt at reconciliation, it became apparent that the marriage could not be saved and the parties proceeded with acrimonious and contentious divorce proceedings.
4. The grant of deferred action specifically states that it will remain in effect **"unless terminated earlier by USCIS for reasonable cause and upon appropriate notice."** In this case the Petitioner was given no notice and no reasonable cause. In fact, it seems that the reason he was detained by ICE was the exact reason he was granted deferred action to begin with – he was reported by his abusive spouse.

5. On February 17, 2026, the Petitioner was detained by ICE officials while leaving his brother's home. It was apparent to the Petitioner that they had been waiting for him.
6. The Petitioner has no criminal history aside from minor traffic violations.
7. The Petitioner was detained and transported to the ICE Enforcement and Removal Operations Sub Station in Miramar, Florida. While detained, the Petitioner called undersigned counsel.
8. Undersigned counsel advised the Petitioner to request the ability to speak to an ICE officer who was near him. That officer refused to come to the phone.
9. Undersigned counsel advised the Petitioner to let the officer know that he had deferred action and requested how that information could be provided to her. The officer was uninterested in the fact that the Petitioner was granted deferred action and refused to provide a method to send the documentation.
10. At the time of Petitioner's arrest and detention there was no material change in circumstances. Furthermore, ICE relied on information from his abusive spouse in order to detain him.
11. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act (INA) and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions.
12. The Petitioner remains detained at the ICE Miramar Sub Station. Petitioner's continued detention is unlawful and the Court should order Petitioner's immediate release from custody. *See Ayala v. Bondi, No. 2:25-cv-01063-JNW-TLF, 2025 U.S. Dist. LEXIS*

*149589, at *1 (W.D. Wash. Aug. 4, 2025); F.R.P. v. Wamsley, No. 3:25-cv-01917-AN, 2025 U.S. Dist. LEXIS 214088, at *2 (D. Or. Oct. 30, 2025)*

JURISDICTION

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article 1, §9, clause 2 of the United States Constitution (Suspension Clause). The instant petition challenges the fact and manner of Petitioner's detention, not the validity of the underlying order of removal.
14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
15. Furthermore, 8 U.S.C. § 1252(b)(9), § 1252(g), and § 1252(a)(2)(B)(ii) do not strip this Court of jurisdiction to review this petition because Petitioner challenges the lawfulness of his detention following revocation of an OSUP, not the government's decision to execute a removal order. Courts consistently distinguish between challenges to removal itself and challenges to detention procedures. See *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152–55 (W.D.N.Y. 2025); *Rubanov v. Trump*, 2025 WL 4721345 at *8 (S.D. Fla, July 30, 2025); *Grigorian v. Bondi*, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025).

VENUE

16. Venue is proper because the Petitioner is detained under the authority of the Respondents at the ICE-ERO Miramar Substation located at 2805 SW 145th Ave. Miramar, FL 33027, which is within this district.

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

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
19. The Court should grant the petition for writ of habeas corpus “forthwith”. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); see *In re Bennett*, 139 F.3d 850 (11th Cir. 1998).

PARTIES

20. Petitioner, Henry Enrique Leiva Murillo, is a citizen of Honduras who has been in immigration detention since on or about February 17, 2026 despite having been granted Deferred Action by USCIS.
21. Respondent Warden, Immigration and Customs Enforcement Miramar Sub Office is the individual acting in the capacity of the warden and the Immigration and Customs

Enforcement Miramar Sub Office which is acting as a de facto detention center. As such, the Warden is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is named in his official capacity.

22. Respondent Miami Field Office Director is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division and the Miramar Sub Office. As such, the Miami Field Office Director is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Substantive Due Process

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

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

27. ICE's decision to detain the Petitioner after his previous release from custody was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and therefore a violation of the Petitioner's Substantive Due Process Rights.
28. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).
29. The Petitioner has a liberty interest in freedom from detention. The government violated Petitioner's procedural due process rights when they arrested and detained Petitioner.

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

30. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1 – 24 as if fully set forth herein.
31. Although it is well established that non-citizens are entitled to due process under the Fifth Amendment, the Eleventh Circuit has long held that a petitioner "must show substantial prejudice," meaning that the alleged violation might have affected the outcome, to prevail on a procedural due process challenge regarding removal proceedings. *Priva v. U.S. Att'y Gen.*, 34 F.4th 946, 954 (11th Cir. 2022) (emphasis added).
32. As Petitioner explains in greater detail below, the facts of his detention despite being a beneficiary of VAWA Deferred Action, without an individualized determination regarding any change in circumstances or evidence rises to the level of substantial prejudice. Had ICE followed its own procedures, the outcome may have been different thereby establishing that ICE violates his Fifth Amendment rights as a matter of procedural due process.

THIRD CLAIM FOR RELIEF
Violation of *Accardi* Doctrine

33. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1-24 as if fully set forth herein.
34. The U.S. Supreme Court established the *Accardi* Doctrine which explains that agencies and government officials must follow their own regulations. See *Accardi v. Shaughnessy*, 347 U.S. 240, 268 (1954).
35. In the instant case, the Department of Homeland Security violated its own procedures and regulations by detaining Petitioner who has been granted deferred action. There is no indication that his deferred action was revoked, that there is reasonable cause to do so, nor was he given notice of their intention to do so.
36. DHS regulations governing procedures for revoking an OSUP, 8 C.F.R. § 241.4(l)(1) & (2)(ii-iii), provide that the government may revoke if an individual violates the conditions of his release.
37. Individuals granted an OSUP have a due process right to prior notice before they can be re-detained for purposes of removal, especially those persons who have resided in the United States for an extended period such as the Petitioner. See *Ceesay*, 781 F. Supp. 3d at 168-69; *Rombot v. Souza*, 296 F. Supp. 3d 383 at 388 (D. Mass. 2017); *Ragbir v. Sessions*, 2018 WL 623557, *3-6 (S.D.N.Y. Jan. 29, 2018) (finding the right to an orderly removal to extend beyond the language of the OSUP revocation of the OSUP to include consideration of factors such as the number of years the individual had resided in the United States and his ties to the community); *Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020); *Drammeh v. Clark*, 2020 WL 5122445, at *2 (W.D.

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

38. At the time of Petitioner’s arrest and detention, there had been no material change in his circumstances, and no notice that his grant of deferred action was or would be revoked. In fact, there seemed to be no care on the part of ICE that he could be a beneficiary of deferred action.

39. Accordingly, under the *Accardi* Doctrine, Petitioner was unlawfully arrested and detained given that ICE, as part of the Department of Homeland Security, did not follow its own procedures and regulations.. Because ICE did not comply with the mandatory procedural safeguards established by the Department of Homeland Security itself, Petitioner's detention is unlawful.

FOURTH CLAIM FOR RELIEF **Violation of Administration Procedure Act**

40. Petitioner repeats, re-alleges, and incorporates by reference the allegations in the paragraphs 1-24 as if fully set forth herein.

41. Title 5 U.S.C. § 706(2)(A) of the Administrative Procedure Act (APA), providing the standard for judicial review of federal agency actions, states that “[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” This standard permits courts to set aside agency actions that violate the law or constitute an abuse of discretion.

42. The final agency action at issue here was ICE’s decision to detain the Petitioner for reinstatement of removal despite having been granted deferred action.

43. ICE's decision, as part of the Department of Homeland Security, to detain him without notice or explanation was arbitrary and capricious. The government failed to perform

an interview or provide any reasoned analysis that would provide the Petitioner with sufficient notice or make removal reasonably foreseeable. Thus, this lack of decision-making or compliance with established procedures violates the APA and should be set aside. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;
- c. Issue an order preventing the Respondents from removing the Petitioner while he is the beneficiary of a grant of Deferred Action and while any request for extension is pending with USCIS;
- d. Alternatively, issue an order granting continued Deferred Action to the Petitioner;
- e. Alternatively, issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 19th day of February 2026.

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

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I am aware of the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: February 19, 2026

/s/ Fairuze Sofia

Fairuze Sofia