

3. Petitioner was ordered removed by the Aurora Immigration Court on February 21, 2014, and neither party filed an appeal of the order of removal. As such, the order became an administratively final order of removal on that same date.
4. On June 16, 2014, approximately four months after the administratively final order of removal was entered, Petitioner was released on an Order of Supervision ("OSUP"). *See Ex. 2.*
5. On February 2, 2026, Petitioner was re-detained by ICE; he remains in the custody and control of ICE at the AIPC.
6. Mr. Zayas was given no information or documentation about why his OSUP was revoked and he was re-detained, other than ICE repeatedly stating Petitioner is to be removed to Mexico.

JURISDICTION

7. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security ("Department" or "DHS"). Petitioner is detained at the Aurora ICE Processing Center in Aurora, Colorado, which is under the direct control of Respondents and their agents.
8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
9. 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).
10. Venue is proper in this district because Respondent Juan Baltasar 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.

VENUE

11. 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. Additionally, 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. § 2241 and § 2243

12. 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.*
13. 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

14. Petitioner is a 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.
15. Respondent Juan Baltasar 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.
16. 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.
17. 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.
18. 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

1. Mr. Zayas was previously granted lawful permanent residency under to the Cuban Adjustment Act.

2. Mr. Zayas is a 36-year-old citizen of Cuba.
3. Mr. Zayas came to the United States on or about September 22, 2004, at the age of 14 and was "processed for I-551" and given a lawful admission until September 22, 2004. *See* Exhibit 1.
4. Mr. Zayas subsequently adjusted states to that of a lawful permanent resident ("LPR") through the Cuban Adjustment Act ("CAA").
5. When Mr. Zayas was 17, he was involved in a criminal matter that resulted in revocation of his status as an LPR and an order of removal being entered on February 21, 2014.
6. Approximately four months after Mr. Zayas was ordered removed, he was released on an Order of Supervision ("OSUP") on June 16, 2014. *See* Exhibit 2.
7. Approximately 12 years later, on February 2, 2026, Mr. Zayas was arrested by the Archuleta County Sheriff's Office for the charge "Habitual Traffic Offender, Driving after Revocation," a misdemeanor offense. Mr. Zayas posted a bond for release.²
8. The Archuleta County Sheriff's Office held Mr. Zayas on a "parole hold" after he posted bond, until his parole officer authorized his release; Mr. Zayas was released from the custody of the Archuleta County Sheriff's Office on February 2, 2026.
9. On February 2, 2026, Petitioner was re-detained by ICE; he remains in the custody and control of ICE at the AIPC.
10. Mr. Zayas was given no information or documentation regarding the reason ICE revoked his OSUP on or after February 2, 2026.

² This is not the only criminal matter that occurred between 2014 and 2026 for Mr. Zayas; however, this is the only criminal matter that led to Mr. Zaya's encountering ICE.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

19. “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).
20. 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).
21. “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).
22. Statutes and Regulations govern procedures for Revoking an Order of Supervision.
23. 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”).

24. 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).
25. 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.
26. 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, e.g., *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

27. It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official “delegated the function or authority . . . for a particular geographic district, region, or area.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 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 intends 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).
28. 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).

The APA Sets Minimum Standards for Final Agency Action

29. 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).

30. ICE's revocation of an Order of Supervision is a final agency action subject to this Court's review.
31. The revocation here marked the consummation of ICE's purported decision making process regarding Petitioner's custody.
32. 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.

The *Accardi* Doctrine Requires DHS and ICE Follow Their Own Procedures

33. 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.”).
34. *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).

35. 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

36. The allegations in the above paragraphs are realleged and incorporated herein.
37. 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.
38. 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.
39. 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.
40. 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**

41. The allegations in the above paragraphs are realleged and incorporated herein.
42. *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.
43. 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.
44. 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.
45. 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.

46. 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**

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

48. 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).

49. 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).

50. 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.

51. 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.

52. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director.

The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.

53. 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.

54. Even assuming regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, respondents did not comply with them, nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

55. 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**

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

57. 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).

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

59. 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).

60. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner was compliant with his Order of Supervision and no new facts or changed circumstances suggest he would.
61. 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).
62. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.
63. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, including financial and administrative costs incurred by the agency due to unnecessary detention.
64. Third, 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.
65. For these and other reasons, Respondents' revocation of Petitioner's OSUP 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**

66. The allegations in the above paragraphs are realleged and incorporated herein.
67. 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).

68. “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).
69. 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” *Zadydas v. Davis*, 533 U.S. 678, 699-700.
70. 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)
71. Respondents’ revocation of Petitioner’s OSUP was based on ultra vires regulations in excess of statutory authority and should be held unlawful and set aside.

Count Six: Ultra Vires Action

72. The allegations in the above paragraphs are realleged and incorporated herein.
73. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.
74. 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

75. The allegations in the above paragraphs are realleged and incorporated herein.
76. 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”).
77. 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).
78. 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.
79. 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,

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Dated: February 20, 2026

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

I represent Petitioner, Pedro Zayas Rodriguez, and submit this verification on his behalf. I hereby verify 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 this 20th day of February 2025.

/s/ Leanne Reetz Hightower
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