

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Carlos VILLARREAL,

Petitioner,

v.

**(1) Warden of South Texas Detention
Center,** in their official capacity

(2) MIGUEL VERGARA, Field Office
Director of the San Antonio Field Office, U.S.
Immigration and Customs Enforcement,
Enforcement and Removal Operations;

(3) TODD LYONS, Senior Official Performing,
the Duties of the Director, U.S. Immigration
and Customs Enforcement;

(4) KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security;

(5) PAMELA BONDI, U.S. Attorney General,
in their official capacities,

Respondents.

Case No. 5:26-cv-01147

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Carlos Villarreal, is a citizen of Mexico detained by Respondents at the South Texas Detention Center pursuant to 8 U.S.C. § 1231.

2. At 12 years of age, in approximately 1996, Petitioner entered the United States on a B1/B2 visa. On approximately December 17, 2012,

Petitioner was granted CAT protection from being returned to Mexico. No appeal was filed. He was placed on an Order of Supervision (“OSUP”), with which he has been compliant for the last approximately 13 years.

3. On September 17, 2025, Petitioner appeared for a regularly scheduled check in with ICE. Without notice of why he was being detained, any opportunity to present a defense to detention, or any opportunity to prepare for an orderly removal, Petitioner was detained.

4. 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.

5. Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to release him.

JURISDICTION

6. Petitioner is in the physical custody of Respondents at South Texas Detention Center in Pearsall, Texas and is under the direct control of Respondents and their agents.

7. This action arises under the Constitution of the United States, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq.*

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018).

VENUE

11. Venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is in custody. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

12. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Respondents are U.S. agencies and officers of the United States acting in their official capacities and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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 Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. 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 of England, 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

15. Petitioner, Carlos Villarreal, is a citizen of Mexico who has resided in the United States since approximately 1996 after entering the United States with a B1/B2 visa at approximately 12 years of age. Petitioner was granted CAT protection in approximately December 2012. He is currently detained by Respondents at South Texas Detention Facility. He has been detained by Respondents since September 17, 2025. Petitioner is in the custody, and under the direct control, of Respondents and their agents.

16. Respondent Warden of the South Texas Detention Facility is sued in their official capacity and has immediate physical custody of Petitioner

pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

17. Respondent Miguel VERGARA is sued in his official capacity as the Field Office Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). Respondent Vergara is a legal custodian of Petitioner and has authority to release him.

18. Respondent Todd LYONS is sued in his official capacity as the Senior Official Performing the Duties of the Director of the U.S. Immigration and Customs Enforcement, which oversees the San Antonio Field Office of U.S. Immigration and Customs Enforcement, the field office responsible for Petitioner's detention. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

19. Respondent Kristi NOEM is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner and has the authority to release him.

20. Respondent Pamela BONDI is sued 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, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

FACTUAL ALLEGATIONS

21. Petitioner, Carlos Villarreal, is a citizen of Mexico detained by Respondents at the South Texas Detention Center pursuant to 8 U.S.C. § 1231.

22. At 12 years of age, in approximately 1996, Petitioner entered the United States on a B1/B2 visa. On approximately December 17, 2012, Petitioner was granted CAT protection from being returned to Mexico. No appeal was filed. He was placed on an OSUP. For the next 13 years, Petitioner complied with all conditions of the order, including periodic check-ins with ICE. No circumstances have changed that make Petitioner a flight risk or danger to the community.

23. But on September 17, 2025, Petitioner appeared for a regularly scheduled check in with ICE. Without notice of why he was being detained, any opportunity to present a defense to detention, or any opportunity to prepare for an orderly removal, Petitioner's OSUP was revoked, he was arrested and detained.

24. Upon information and belief, the official responsible for revoking Petitioner's OSUP did not first refer the case to the ICE Executive Associate Director, a field office director, or an official delegated the function or authority for the particular geographic district, region, or area did not make findings that

revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, and had not been delegated authority to revoke an OSUP.

25. 21. Upon arrest, ICE transferred Petitioner to the South Texas Detention Center, where he is currently detained.

26. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's OSUP or give him an opportunity to respond to those reasons.

27. Upon information and belief, at the time ICE revoked Petitioner's OSUP, the agency had not secured travel documents necessary for removal from the United States.

LEGAL BACKGROUND

28. Noncitizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Noncitizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16(c). To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2).

29. When an IJ grants a noncitizen CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See, e.g., Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021) (discussing procedure for granting CAT relief and explaining that applicants are first ordered removed). Once CAT relief is granted, either party has the right to appeal that decision to the BIA. 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the CAT relief grant becomes administratively final. *Id.* § 1241.1(c).

30. When a noncitizen has a final CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a likelihood of torture. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove noncitizens who were granted CAT relief to alternative countries, the removal statute specifies restrictive criteria for identifying appropriate countries. 8 U.S.C. §§ 1231(b), 1208.16(f). Noncitizens granted CAT can be removed only to the country “of which the [noncitizen] is a citizen, subject, or national,” the country “in which the [noncitizen] was born,” or the country “in which the [noncitizen] resided” immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

31. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country. *Jama v. Immigration and Customs Enforcement*, 543

U.S. 335, 348 (2005) (“If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture . . .”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”), *rev’d on other grounds*, *Guzman Chavez*, 141 S. Ct.

Statutory Framework – 8 U.S.C. § 1231

32. Section 1231(a)(2)(A) mandates detention during the removal period, which is the 90 days following entry of a final order of removal. *See also* 8 U.S.C. § 1231(a)(1)(A) (specifying the 90-day period). ICE has discretion to detain certain individuals who are inadmissible or deportable under specified statutory categories beyond the 90-day removal period. 8 U.S.C. § 1231(a)(6). These inadmissibility and deportability categories are not at issue in this case. If an individual who does not meet the enumerated inadmissibility or deportability categories “does not leave or is not removed within the removal period,” then he or she “shall be subject to supervision under regulations prescribed by the Attorney General.” *Id.* at § 1231(a)(3) (titled “Supervision after 90-day period”).

33. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that reading § 1231 as permitting “indefinite detention” would “raise serious constitutional concern,” which must be avoided by also reading an implicit reasonable

time limitation (six months) on such detention. The presumptive six-month period announced in *Zadvydas* prevents § 1231 from allowing indefinite detention, but it is a presumption which can be rebutted where the petitioner demonstrates that removal is not reasonably foreseeable. *See, e.g., Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 379 (D. Md. 2025). As *Zadvydas* emphasized, a noncitizen may be held only until “it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701; *see also Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (“[I]f the [noncitizen] ‘provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,’ the Government must either rebut that showing or release the [noncitizen].”) (quoting *Zadvydas*, 533 U.S. at 701); *cf. Demore v. Kim*, 538 U.S. 510, 527 (2003) (where removal was “no longer practically attainable,” “detention there did not serve its purported immigration purpose”) (quoting *Zadvydas*, 533 U.S. at 690); *Clark v. Martinez*, 543 U.S. 371, 384 (2005) (§ 1231 “should be read . . . to authorize detention only for a period consistent with the purpose of effectuating removal.”).

34. Accordingly, “[w]ithin the six-month window,” the noncitizen bears the burden of “prov[ing] the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). Therefore, 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 noncitizen’s release may and should be

conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699-700.

Regulatory Framework – 8 C.F.R. §§ 241.4, 241.13

35. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an OSUP may be revoked and a noncitizen may be re-detained past the removal period: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order . . . ; or (iv) 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)(1) (permitting revocation of an OSUP only if a noncitizen “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., Xiu Qing 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).

36. Conditions of supervision are generally set forth in an Order of Supervision (“OSUP”), which typically requires the person to report regularly to an immigration officer and informs them the government will continue its efforts to deport them. *Id.* at § 1231(a)(3) and (6) (specifying OSUP requirements).

37. Once released on an OSUP, regulations govern how it may be revoked. Specifically, 8 C.F.R. § 241.4(l)(1) & (2)(ii) provide that the government may revoke

release if an individual violates the conditions of release. Section 241.4(l)(2) further provides that the appropriate senior ICE official may also revoke release upon finding that (i) “the purposes of release have been served;” (iii) “it is appropriate to enforce a removal order . . .;” or (iv) “circumstance[s] indicate[] that release would no longer be appropriate.” Section 241.4 also provides procedures for review if ICE re-detains someone under these provisions, consisting of notice upon revocation for the reasons thereof and a prompt informal interview to respond, *id.* § 241.4(l)(1), followed by a custody review within 3 months of re-detention. *Id.* § 241.4(l)(3).

38. Thus, the regulations permit only certain officials to revoke an OSUP: 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 OSUP, 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 OSUP, the delegation order must explicitly say so. *Ceesay*, 781 F. Supp. at 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 OSUP).

39. Upon revocation of an OSUP, 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 *Accardi* Doctrine

40. 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 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.”).

41. *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*, 415 U.S. (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).

42. Prejudice is generally presumed when an agency violates its own policy. *See Montilla*, 926 F.2d at 167 (“We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for

the alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

43. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy. *See, e.g., Damus v. Nielson*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018) ("[T]his Court is simply ordering that Defendants do what they already admit is required."). Alternatively, a court may apply the policy itself and order relief consistent with the policy. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

44. ICE's long-standing policy (hereinafter "the Policy") is to release noncitizens immediately following a grant of withholding or CAT relief absent exceptional circumstances. *See* Ex. A at 4 ("it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.").¹ "[T]he Field Office Director must approve a decision to keep an alien granted protection relief in custody pending appeal, in consultation with the Chief Counsel." *Id.* at 4.

¹ Counsel completed multiple searches of the ICE policy and memoranda page and found no information indicating this policy has been rescinded.

45. The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention: ICE has reasonably concluded that 8 U.S.C. § 1231(a)(2) does not require the detention of non-citizens granted CAT relief for the entirety of the 90-day removal period. Furthermore, the Policy's language demonstrates that the ICE Policy is a general policy applicable across all protection cases, not just when ICE has appealed the decision granting protection. *See, e.g., id.* at 4 ("In general, it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain."). This extends the Policy to noncitizens with final removal orders who were granted withholding or CAT relief.

46. The Policy is consistent with the broad discretion the statute and regulations governing post-removal order detention afforded to ICE. In the situation where the individual has been detained beyond the removal period, neither the statute nor regulations specifically contradict the Policy, and the regulatory language suggests that the standard custody review procedures for noncitizens with final removal orders do not apply to noncitizens like Petitioner who have been detained for 90 days or more after being granted withholding or CAT and lack connection to an alternative country. *See, e.g.,* 8 C.F.R. § 241.4(b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, under the procedures provided in 8 CFR 241.13, that there is no significant likelihood that

[noncitizen] under a final order of removal can be removed in the reasonably foreseeable future.”).

47. The Policy is precisely the type of rule the *Accardi* doctrine requires ICE to follow. See, e.g., *Damus*, 313 F. Supp. 3d at 343.

Due Process

48. “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*, 533 U.S. at 693. “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.

49. Under substantive due process doctrine, a restraint on liberty like revocation of a noncitizen’s OSUP is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997); see also *United States v. Salerno*, 481 U.S. 739, 747 (1987). 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*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

50. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to revoke a noncitizen’s OSUP. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “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.

51. When agencies fail to adhere to their own policies as required by *Accardi*, courts often frame the violation as a due process violation. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.”) (internal quotations omitted).

APA Standard for Final Agency Action

52. The Administrative Procedure Act (“APA”) authorizes judicial review of final agency action. 5 U.S.C. § 704.

53. 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) (internal quotations and citations omitted). The revocation was also an action by which rights or obligations have been determined and from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulations.

54. 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).

55. Agency action must not be arbitrary or capricious. *See, e.g.*, 5 USC § 706 (permitting judicial review of arbitrary and capricious federal agency

action). “The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.” *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 141 S.Ct. 1150, 1158 (2021). ICE’s departure from its own policy is arbitrary, capricious, and contrary to law under the APA. When agencies fail to adhere to their own policies as required by *Accardi*, courts often frame the violation as arbitrary, capricious, and contrary to law under the APA. *See Damus*, 313 F. Supp. 3d at 337 (“It is clear, moreover, that [*Accardi*] claims may arise under the APA”).

56. 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).

57. ICE’s revocation of an OSUP is a final agency action subject to this Court’s review. In this case, the revocation marked the consummation of ICE’s decisionmaking process regarding Petitioner’s custody.

CAUSES OF ACTION

Count One

Violation of the Fifth Amendment of the U.S. Constitution

Substantive Due Process

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

59. When ICE issued Petitioner an OSUP, it found that he is neither a danger to the community nor a flight risk.

60. When Respondents revoked the OSUP, Petitioner had complied with every condition of the order, and upon information and belief, ICE had not secured necessary travel documents for removal. No change in circumstances warranted the order's revocation.

61. 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.

62. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's OSUP, 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

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

64. *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.

65. 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*, 533 U.S. at 690.

66. 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, the statute specifies the limited number of reasons that an OSUP 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 OSUP 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.

67. 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 OSUP, 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 OSUP reduces fiscal and administrative burdens on the government.

68. For these reasons, revoking Petitioner's OSUP 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

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 . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

71. 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).

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

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

74. Upon information and belief, Petitioner's OSUP was not revoked by the ICE Executive Associate Director, a field office director, or an official delegated the function or authority for the particular geographic district, region, or area. 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. Upon information and belief, the officer had not been delegated authority to revoke an OSUP.

75. Upon information and belief, 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.

76. Even assuming that regulations purporting to offer additional justifications for revocation of an OSUP are not ultra vires, Respondents did not comply with them. Upon information and belief, Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because he had not. Nor could Respondents 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.

77. Nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.

78. 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 implementing regulations.

Count Four

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

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

80. 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).

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

82. 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).

83. Respondents' decision to revoke Petitioner's OSUP 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 OSUP and no new facts or changed circumstances suggest he would.

84. 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) (internal quotations and citation omitted).

85. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner’s OSUP without notice and opportunity to respond.

86. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the OSUP of Petitioner, who is neither a flight risk nor a danger to the community and for whom, upon information and belief, the agency does not have travel documents needed to effectuate removal, including financial and administrative costs incurred by the agency due to unnecessary detention.

87. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner’s OSUP that were before the agency, like simply continuing release—as they have done for the last 13 years—under the OSUP 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.

88. 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.

89. Thus, Respondents' revocation of Petitioner's OSUP was arbitrary and capricious and should be held unlawful and set aside.

Count Five

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

Agency Action In Excess of Statutory Authority

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

91. 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).

92. "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).

93. Eight 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 [noncitizen's] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances" *Zadvydas*, 533 U.S. at 699-700.

94. Regulations that purport to give Respondents authority to revoke an OSUP 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." *Xiu Qing You v. Nielsen*, 321 F. Supp. 3d. at 463.

95. Because Respondents' revocation of Petitioner's OSUP was based on ultra vires regulations, it was in excess of statutory authority and should be held unlawful and set aside.

Count Six

Violation of the *Accardi* Doctrine

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

97. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See Accardi*, 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").

98. Respondents violated agency regulations governing who and upon what findings it may properly revoke an OSUP 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*, 781 F. Supp. 3d at 162 (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 386-89 (D.Mass. 2017)); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE OSUP was ordered by someone without regulatory authority to do so).

99. Respondents also violated agency instructions in Petitioner’s release notice of the revocation and an opportunity to dispute it. *See, e.g., Zhu v. Genalo*, No. 1:25-CV-06523-JLR (S.D.N.Y. Aug. 26, 2025).

100. Under *Accardi*, Respondents’ revocation of the OSUP 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 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. 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;
- D. Order Petitioner’s immediate release;
- E. Alternatively, review Petitioner’s custody under the standard articulated in ICE policy, or order ICE to review Petitioner’s custody accordingly;
- F. Award Petitioner costs and reasonable attorneys’ fees; and

G. Order such other relief as this Court may deem just and proper.

Respectfully submitted this 23rd day of February, 2026.

s/Jennifer Walker Gates
JLW Immigration Law Group
Attorney in Charge
Texas Bar No. 24051483
PO Box 202050
Austin, Texas 78759
Phone: 512-633-1785
jennifer@jlw.law
Counsel for Petitioner

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

I represent Petitioner, Carlos Villarreal, 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 23rd day of February, 2026.

s/Jennifer Walker Gates
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, a true and correct copy of the foregoing Petition for Writ of Habeas Corpus was provided to the following Respondents via e-filing:

Warden
South Texas Detention Center
566 Veterans Drive
Pearsall, TX 78061

Miguel Vergara, Field Office Director of the San Antonio Field Office
U.S. Immigration and Customs Enforcement
500 12th St. SW, Mail Stop 5900
Washington, DC 20536-5900

Todd Lyons, Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th St. SW, Mail Stop 5900
Washington, DC 20536-5900

Kristi Noem, Secretary
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi
Attorney General
950 Pennsylvania Ave NW
Washington, DC 20530

Stephanie Rico
Civil Process Clerk
Office of the United States Attorney for the Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

s/Jennifer Walker Gates
JLW Immigration Law Group
PO Box 202050
Austin, Texas 78759
jennifer@jlw.law
Counsel for Petitioner