

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

Case No. 2:26-cv-00637

JOSE SANTIAGO VILA-ALFARO,

Petitioner,

v.

**FIELD OFFICE DIRECTOR, Miami
Field Office, U.S. Immigration and
Customs Enforcement;**

**WARDEN, Florida Soft Side South
Facility,**

Respondents.

_____ /

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION FOR ORDER TO SHOW CAUSE**

The Petitioner, Jose Santiago Vila-Alfaro, hereby petitions for issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2241 seeking immediate release as he has been unlawfully held in civil immigration detention since November 27, 2025. The Petitioner in support thereof states:

1. The Petitioner is a sixty-five-year-old Cuban national with the corresponding alien number A  Appx, pp. 1-3.

2. The Petitioner was paroled into the United States on May 25, 1980, during the Mariel boatlift. The Petitioner has continuously resided in the United States

since that time. **Appx, pp. 5-6.**

3. On May 19, 1999, an Immigration Judge ordered the Petitioner removed to Cuba. **Appx, p. 4.**

4. The Department of Homeland Security was unable to execute the removal order.

5. On July 2, 2007, Immigration and Customs Enforcement (ICE) released the Petitioner from custody on an Order of Supervision (OSUP) pursuant to 8 C.F.R. § 212.12. **Appx, pp. 5-6.**

6. Since his OSUP release, the Petitioner has complied with his yearly ICE reporting requirement, continues to be contributing member of society, has maintained lawful employment and established strong familial ties. **Appx, pp. 1-3, 5-6, 12-13.**

7. On November 25, 2026, the Petitioner was arrested by Miami-Dade police officers following a traffic stop. **Appx, pp. 7-8.**

8. On November 27, 2025, the Petitioner was transferred to ICE custody and has been held at the Florida Soft Side South (“Alligator Alcatraz”) facility in Ochopee, Florida without a meaningful opportunity to contest his detention. **Appx, p. 9.**

9. The Petitioner’s OSUP has been revoked in violation of the governing regulations and legal doctrines that apply to Mariel Cubans. 8 C.F.R. § 212.12(a).

10. The Petitioner brings this habeas petition to challenge the legality of his detention based on the process used to revoke his release. *See Perez v. Warden, et al.,*

No. 2:26-cv-0009-SPC-DNF, 2026 WL 131650 (M.D. Fla. Jan. 19, 2026), **Appx, pp. 14-21** (finding that ICE violated the petitioner's due process rights by revoking his parole without complying with the regulations applicable to Mariel Cubans under 8 C.F.R. § 212.12 and detaining the petitioner without a meaningful opportunity to be heard).

CUSTODY

11. The Petitioner satisfies the "in custody" requirement for habeas review because he is physically detained by ICE at the Florida Soft South Side facility in Ochopeee, Florida.

JURISDICTION

12. The Petitioner is in the physical custody of the Respondent. The Petitioner is detained at the Florida Soft Side South facility in Ochopee, Florida.

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal question) and the U.S. Constitution, art. I, § 9, cl. 2 (suspension clause).

14. The Court may grant relief pursuant to 18 U.S.C. §§ 2841, et seq., 2201 – 01 (Declaratory Judgement Act), and 1651 (All Writs Act).

VENUE

15. Venue is proper in this district under 18 U.S.C. § 2242 because this is the district where "the custodian can be reached by service of process." *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. 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). “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. INS*, 208 F. 3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner, **Jose Santiago Vila-Alfaro**, is a Cuban national who was paroled into the United States during the Mariel boatlift in 1980. He is currently detained at the Florida Soft Side South facility.

19. Respondent, **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement, is sued in his or her official capacity. In this capacity, Respondent has jurisdiction over the detention facility in which Petitioner is

held, is authorized to release Petitioner, has the “power to produce” Petitioner, *Munaf v. Geren*, 553 U.S. 674, 686 (2008), and is a legal custodian of Petitioner.

20. Respondent, **Warden of Florida Soft Side South** facility, has immediate custody of the petitioner, is sued in his or her official capacity.

FACTS AND PROCEDURAL HISTORY

21. The Petitioner is a sixty-five-year-old Cuban national with the corresponding alien number A  **Appx, pp. 1-3.**

22. He was paroled into the United States on May 25, 1980, during the Mariel boatlift and has continuously resided in the United States since that time. **Appx, p. 5-6.**

23. On May 19, 1999, an Immigration Judge ordered the Petitioner removed to Cuba. **Appx, p. 4.**

24. The Department of Homeland Security was unable to execute the removal order.

25. On July 2, 2007, Immigration and Customs Enforcement ICE therefore released the Petitioner from custody pursuant to an OSUP as authorized under 8 C.F.R. § 212.12. **Appx, pp. 5-6.**

26. Since his OSUP release, the Petitioner has complied with his yearly ICE reporting requirement, continues to be contributing member of society, has maintained lawful employment and established strong familial ties. **Appx, pp. 1-3, 5-6, 12-13.**

27. The Petitioner married his U.S. Citizen wife on December 31, 2009, in Miami-Dade County, Florida. **Appx, pp. 12-13.**

28. On November 25, 2026, the Petitioner was arrested by Miami-Dade police officers following a traffic stop. **Appx, pp. 7-8.**

29. On November 27, 2025, the Petitioner was transferred to ICE custody and has been held at the Florida Soft Side South facility in Ochopee, Florida without meaningful opportunity to contest his detention. **Appx, p. 9.**

30. On February 28, 2026, ICE issued the Petitioner a Notice to Alien of File Custody Review stating that “[i]f ICE has not removed you from the United States within the removal period as set forth in INA 241(a)” an ICE official will review the case for consideration of release. **Appx, pp. 10-11.**

31. The procedures set in the February Notice, however, do not cover the governing authority and regulations that govern the Petitioner’s release. 8 C.F.R. § 212.12. Rather, the notice includes boilerplate language under the Immigration and Nationality Act which requires deportation officers to review custody of a detainee every ninety days. **Appx., pp. 10-11.**

32. ICE’s revocation of the Petitioner’s release violates his substantive and procedural due process rights, the *Accardi* doctrine, and applicable federal regulations. 8 C.F.R. § 212.12(a).

33. The Petitioner challenges the legality of his detention based on the process used to revoke his release. *See, e.g., Perez v. Warden, et al.*, No. 2:26-cv-0009-SPC-DNF, 2026 WL 131650 (M.D. Fla. Jan. 19, 2026). **Appx, pp. 14-21.**

34. The Petitioner does not challenge the commencement of his removal proceeding, the adjudication of a case, or the execution of his removal order.

35. The Petitioner is not seeking a review of his removal order.

36. The Petitioner is contesting his detention because the Respondents have not complied with the applicable governing regulations. 8 C.F.R. § 212.12; *Perez*, 2026 WL 131650 at *3.

STATEMENT OF LAW

37. The Petitioner's detention is unlawful because the government has failed to follow its own procedures, choosing instead to detain the petitioner in violation of 8 C.F.R. §§ 212.12, 241.4(b)(2), and 241.13(b)(3)(i); the Due Process Clause of the Fifth Amendment to the United States Constitution; and the dictates of *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), and its progeny.

38. The Petitioner entered the United States on May 25, 1980, as part of the Mariel boatlift, a historic event that has long shaped the United States' repatriation policies towards Cuba.

39. Because the United States could not deport detainees with final orders of removal to Cuba¹, Congress enacted a regulation that specifically governs the parole

¹ *See* Central Intelligence Agency, *Cuban Excludables* (Discussion Paper, declassified and approved for release on April 18, 2011), CIA-RDP84B00049R000701760003-3 (internal CIA

and detention authority applicable to this group of individuals, now referred to as the “Mariel” Cubans. 8 C.F.R. § 212.12.

40. The Department of Homeland Security has promulgated two generally applicable regulations, 8 C.F.R. §§ 241.4 and 241.13, that govern when a noncitizen may be released on an OSUP and when that release may be revoked. Section 241.4 provides generic requirements governing the use of OSUPs. Section 241.13 applies specifically when OSUPs are used or revoked because there has been a change in the likelihood of the noncitizen’s removal in the reasonably foreseeable future. There is a third regulation, 8 C.F.R. § 212.12, that specifically governs the parole, revocation of parole or detention of a Mariel Cuban pending his or her attempted removal from the United States. **Section 212.12 is the sole governing regulation for Mariel Cubans, such as the Petitioner.**

41. Thus, the Petitioner’s detention is governed by the procedures set forth in section 212.12(a) of the Code of Federal Regulations which covers parole and revocations with respect to Mariel Cubans. It reads:

“This section applies to any native of Cuba who last came to the United States between April 15, 1980, and October 20, 1980 (hereinafter referred to as Mariel Cuban) and who is being detained by the Immigration and Naturalization Service (hereinafter referred to as the Service) pending his or her exclusion hearing, or pending his or her return to Cuba or to another country. It covers Mariel Cubans who have never been paroled as well as those Mariel Cubans whose previous parole has been revoked by the Service. **It also applies to any Mariel Cuban, detained under the authority of the Immigration and Nationality Act in any facility, who**

document noting that Cuba “refused to accept the unconditional return of any Cuban found excludable under U.S. law,” which underscores diplomatic intransigence).

has not been approved for release or who is currently awaiting movement to a Service or Bureau of Prisons (BOP) facility. In addition, it covers the revocation of parole for those Mariel Cubans who have been released on parole at any time.”

8 C.F.R. § 212.12(a) (emphasis added).

42. Critically, by disregarding the mandatory referral of Mariel Cubans under 8 C.F.R. §§ 212.12 and 241.4(b)(2) to “Cuban Review Panels,” the Petitioner’s detention is fatally defective and, therefore, unlawful.

43. The authority to grant, deny, or revoke parole is discretionary but subject to strong procedural limitations, including interviews before a “Cuban Review Panel” in which regulatory criteria regarding dangerousness and family ties, *inter alia*, are applied before entering a decision to release a Mariel Cuban. § 212.12(d)-(h).

44. Section 212.12 further requires that decisions to continue detention be accompanied by a statement of reasons, as outlined in §212.12(b)(1), and that detainees be provided a copy of the decision translated into Spanish.

45. Respondents have not complied with any of these regulatory requirements.

46. Respondents have failed to provide the Petitioner with an explanation for his continued detention or revocation of his OSUP as required under 8 C.F.R. § 212.12.

47. Similarly, Respondents have failed to issue a prompt informal interview under § 212.12 regarding ICE’s decision to revoke the Petitioner’s OSUP and re-detain

him even though ICE had the opportunity to do so at Petitioner's initial transfer on November 27, 2025, or soon thereafter.

48. This Court, and others, have found that the government's detention of Mariel Cubans without applying the required procedures is a violation of due process. In *Perez v. Warden, et al.*, No. 2:26-cv-0009-SPC-DNF, 2026 WL 131650, *3 (M.D. Fla. Jan. 19, 2026), the Court detailed the correct procedures and the government's due process violations:

What is more, ICE did not follow the correct regulations. According to the notice served on Perez, ICE decided to revoke release "pursuant to 8 C.F.R. § 241.4 / 8 C.F.R. § 214.13." (Doc. 1-3 at 2). **Both regulations explicitly do not apply to Mariel Cubans.** See 8 C.F.R. §§ 241.4(b)(2) and 241.13(b)(3)(i). **Rather, a separate regulation—8 C.F.R. § 212.12—governs parole determinations and revocations respecting Mariel Cubans.** It requires a Cuban Review Panel to review parole decisions, including revocation. The panel must review the record, interview the noncitizen, and make a recommendation based on certain enumerated criteria. The review can be suspended if the Cuban Review Plan Director determines the "detainee's prompt deportation is practicable and proper." 8 C.F.R. § 212.12(g)(1). **ICE did not follow those procedures here. The Court recognizes significant value in the safeguards required by § 212.12. They ensure immigration detention serves its statutory purposes and is used in accordance with the laws enacted by Congress.**

Id. Appx, pp. 14-21.

49. Arbitrary or unexplained revocation, especially without identifying a third country for removal, violates both agency regulations and due process protections under the Fifth Amendment. See *Castaneda v. Souza*, 810 F.3d 15, 43 (1st Cir. 2015) (en banc) (recognizing liberty interest in avoiding arbitrary immigration detention); *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011) (recognizing

procedural due process rights in prolonged detention under § 241). Moreover, Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. Under section 212.12, ICE is required to provide a formal OSUP revocation notice that identifies the basis for the revocation and a process by which to challenge the revocation. Failure to do so constitutes the very sort of arbitrary governmental action that violates due process. *Morrissey v. Brewer*, 408 U.S. 471 (1972) (recognizing that a parolee's conditional liberty is a protected liberty interest and may not be terminated without orderly procedural safeguards). And, as the Supreme Court has made clear in no uncertain terms "the Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful [or] unlawful" *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Reno v. Florida*, 507 U.S. 292, 306 (1993) ("the Fifth Amendment entitles aliens to due process of law in deportation proceedings").

50. In *Grigorian v. Bondi*, the Court ordered the Petitioner's release, finding that "[t]he failure to provide Petitioner with an informal interview promptly after his detention or to otherwise provide a meaningful opportunity to contest the reasons for revocation violates both ICE's own regulations and the Fifth Amendment Due Process Clause." *Grigorian v. Bondi*, No. 25-CV-22914-RAR, at *18-19 (S.D. Fla. Sep. 9, 2025).

51. Numerous courts throughout the nation have reached similar conclusions.²

² See, e.g., *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017);

52. The revocation of Petitioner's OSUP and ongoing detention are a stark violation of constitutional protections under the Fifth Amendment and Petitioner's due process rights. Petitioner has lived at liberty in the United States for decades and is, at a minimum, entitled to notice of any purported country of removal and a meaningful opportunity to be heard regarding the government's asserted ability to remove him there. *United States v. Smith*, 30 F. 4th 1334, 1338 (11th Cir. 2022) ("the complete denial of the opportunity to be heard on a material issue is a violation of due process which is never a harmless error" (cleaned up)).

53. Therefore, ICE's failure to provide the required procedures violates the *Accardi* doctrine. And a notification that the Petitioner's detention will be reviewed within ninety days or at some future point is insufficient to cure the violation. As the *Grigorian* Court explained:

[T]he faint promise of an opportunity to be heard three months down the line [does not] satisfy what due process requires. See 8 C.F.R. § 241.4(l)(3) (providing that the formal review process will begin "within approximately three months" only "if the alien is not released from custody following the informal interview"). If the eventual promise of a formal review were enough to cure a due process violation, ICE would be able to hold individuals for approximately three months after revocation with no meaningful opportunity to be heard.

Grigorian, No. 1:25-cv-22914, at *18.

Zhu v. Genalo, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7-9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV01204-AA, 2025 WL 2430267, at *10-12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Wing Nuen Liu v. Carter*, Case No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

54. The Petitioner has been in the United States for over forty-five years. To now subject the Petitioner to continued detention without a meaningful opportunity to contest that detention is arbitrary, unlawful, and a violation of the Petitioner's constitutional and human rights. *Perez v. Warden, et al.*, No. 2:26-cv-0009-SPC-DNF, 2026 WL 131650, *3 (M.D. Fla. Jan. 19, 2026) (emphasis added). **Appx, pp. 14-21.**

CLAIMS FOR RELIEF

COUNT I

Civil Immigration Detention in Violation of Regulations

55. The allegations in paragraphs 1-54 are realleged and incorporated herein.

56. Under the *Accardi* doctrine, agencies must follow their own binding regulations, particularly when those regulations protect individual liberty interests. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

57. 8 C.F.R. § 212.12(h) provides grounds for revoking parole, supervised release or for justifying continued detention of Mariel Cubans pending their return to Cuba or a third country. Respondents disregarded every requirement of §§ 212.12, 241.4, and 241.13. Respondents provided the Petitioner no written explanation, no finding of a violation, and no procedural steps whatsoever before cancelling his supervision and taking him into custody. Under the *Accardi* doctrine, this failure to follow binding regulations renders the agency action unlawful. ICE failed to comply with the mandatory grounds for revocation set forth in 8 C.F.R. § 212.12(h).

58. Respondents have also violated the notice, interview, and opportunity to respond requirements of 8 C.F.R. §241.4(l).

59. Thus, the Respondents deprived the Petitioner both of the protections applicable to the custody and continued detention of Mariel Cubans, 8 C.F.R. § 212.12, and the generic OSUP revocation procedures, *see* 8 C.F.R. §241.4(l) and 241.13, that ICE must follow before re-initiating detention or attempting removal.

60. Because the Respondents lacked the regulatory authority to revoke the Petitioner's supervision or re-detain him, their custody of the Petitioner is ultra vires and must be vacated.

COUNT II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT Procedural Due Process

61. The allegations in paragraphs 1-54 are realleged and incorporated herein.

62. The government may not deprive a person of life, liberty or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

63. Petitioner has a fundamental interest in liberty and being free from official restraint.

64. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate whether adjudicatory procedures sufficiently protect individuals' due process rights. The Due Process Clause requires, at a minimum, **notice** and a **meaningful opportunity to be heard** before an individual may be deprived of liberty.

65. Petitioner received neither. ICE revoked his OSUP **without prior notice, without alleging any violation, without providing a written explanation, and without affording Petitioner an opportunity to contest the revocation.** This constitutes a denial of the most basic procedural protections required by the Fifth Amendment and described in *Mathews*.

66. ICE failed to comply with the mandatory grounds for revocation set forth in 8 C.F.R. §§ 241.4 and 212.12. The agency's disregard of these mandatory prerequisites further underscores the absence of any lawful basis for re-detention and heightens the procedural due process violation.

67. Respondents deprived Petitioner of the protections applicable to the custody and continued detention of Mariel Cubans, 8 C.F.R. § 212.12, as well as the OSUP revocation procedures, 8 C.F.R. § 241.13, that ICE must follow before re-initiating detention, or attempting removal.

PRAYER FOR RELIEF

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

- a) Assume jurisdiction over this matter;
- b) Order that Petitioner shall not be transferred outside the Middle District of

Florida while this habeas petition is pending;

- c) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d) Issue a Writ of Habeas Corpus requiring that Respondents release the Petitioner within twenty-four hours;
- e) Declare that Petitioner's release is unlawful;
- 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 such other and further relief that this Court deems just and proper.

Dated: March 5, 2026

Respectfully submitted,

/s/ Mason Kerns

Fla. Bar No. 91754

Mason Kerns Law, P.A.

1200 Ponce de Leon Blvd., Ste. 704

Coral Gables, FL 33134

t. (305) 203-1230

e. mason@masonkernslaw.com

/s/ Barbara R. Llanes

Fla. Bar No. 1032727

Gelber Schachter & Greenberg, P.A.

One Southeast Third Avenue, Ste. 2600

Miami, FL 33131

t. (305) 728-0950

e. bllanes@gsgpa.com

Counsel for Petitioner

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

I represent Petitioner, Jose Santiago Vila-Alfaro, 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: March 5, 2026

Respectfully submitted,

/s/ Mason Kerns

Fla. Bar No. 91754

Mason Kerns Law, P.A.

1200 Ponce de Leon Blvd., Ste. 704

Coral Gables, FL 33134

t. (305) 203-1230

e. mason@masonkernslaw.com

Counsel for Petitioner