

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT MYERS DIVISION**

MORENO-RUBIO, Erlin A.,

A 

Petitioner-Plaintiff,

v.

**Garrett Ripa, in his official capacity as
Field Office Director, Miami field Office,
U.S. Immigration and Customs
Enforcement; Warden, Florida Soft Side
South Detention Center; U.S.
Department of Homeland Security; and
U.S. Immigration and Customs
Enforcement,**

Respondents-Defendants.

Case No. 2:26-cv-655

**Verified Petition for Writ of
Habeas Corpus**

INTRODUCTION

1. This case challenges the unlawful detention of **Erlin A. MORENO-RUBIO**, (“Petitioner” or “[Mr. **Moreno Rubio**”)), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at Florida Soft Side South, 54575 Tamiami Trail, E, Ochopee, FL 34141. Petitioner is neither a flight risk nor a danger to the community.

2. On **March 3, 2021**, Petitioner was granted withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act (“INA”), prohibiting his removal back to Iran. *See 8 U.S.C. § 1231(b)(3)*. Concurrently, the immigration judge issued him an order of removal. A few days later, Immigration and Customs Enforcement (“ICE”) released Petitioner from immigration detention on an Order of Supervision (“OSUP”).

3. Since his release several years ago, Petitioner has applied for and received employment authorization from the Department of Homeland Security (“DHS”) based on his release on an OSUP. He has also complied with every request, demand, and requirement imposed by Respondents of which Petitioner is aware, including attending his scheduled annual ICE check-ins.

4. But on or about **March 5, 2026**, ICE detained him without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

5. On information and belief, ICE did not re-detain Petitioner based on his personal circumstances or individualized facts. Nor did ICE re-detain Petitioner because Respondents plan to remove him to an identified third country. Instead, Respondents detained Petitioner because of their interpretation of President Trump’s order that they “to do all in their power to achieve the very important goal of delivering the single

largest Mass Deportation Program in History.”¹ But Respondents’ power to detain remains checked by law, as this country remains “a government of laws and not of men.” *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring) (cleaned up).

6. ICE has previously found that Petitioner was neither a flight risk nor danger to the community when it previously released Petitioner from ICE detention on **March 3, 2021**, under an order of granting withholding of removal.

7. Since then, Petitioner has fully abided by the order of withholding of removal’s terms, including attending regularly scheduled check-ins with ICE.

8. Petitioner is currently detained at **Florida Soft Side South Detention Center**.

9. But Respondents cannot evade the law so easily.

10. Petitioner challenges his re-detention and indefinite detention as a violation of the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, and ICE’s own policies.

11. To vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court to find that Respondents’ re-

¹ Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (“ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”).

detention and indefinite detention of Petitioner is arbitrary and capricious and in violation of the law.

12. Respondents-Defendants' 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.

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

14. Petitioner is a member of the nationwide class action concerning noncitizens who have a final removal order issued in removal proceedings under Section 240, 241(a)(5), or 238(b) of the Immigration and Nationality Act, *8 U.S.C. §§ 1229a, 1231(a)(5), or 1238(b). D.V.D v. D.H.S.*, 2026 WL 521557

15. Petitioner satisfies the requirements of *D.V.D.* class membership, that the district court's rationale applies to the class member's third-country claims, and that the final declaratory and set aside relief issued in *D.V.D.* is persuasive authority.

PARTIES

16. Petitioner has lived in the United States for **sixteen (16) years**. Prior to petitioner's detention, he was residing in Miami, Florida. Petitioner is currently detained at **Florida Soft Side South Detention Center**.

17. Petitioner-Defendant, **Garrett Ripa**, in his official capacity as Field Office Director, Miami field Office, U.S. Immigration and Customs Enforcement, which includes **Florida Soft Side South Detention Center**, where Petitioner is currently detained.

18. Petitioner-Defendant, Warden of **Florida Soft Side South Detention Center**, is sued in his official capacity as Warden of **Florida Soft Side South Detention Center**, where petitioner is currently detained.

19. Petitioner-Defendant, U.S. Department of Homeland Security ("DHS") is a federal agency headquartered in Washington, D.C. and the parent agency of ICE.

20. Petitioner-Defendant ICE, is a component agency of DHS.

JURISDICTION AND VENUE

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

22. This court has subject matter jurisdiction under *28 U.S.C. § 2241* (habeas corpus), *28 U.S.C. § 1331* (federal question), and *Article I, § 9, cl. 2* of the United States Constitution (Suspension Clause).

23. This Court may grant relief under the habeas corpus statutes, *28 U.S.C. § 2241 et. seq.*, the Declaratory Judgment Act, *28 U.S.C. § 2201 et. seq.*, and the All Writs Act, *28 U.S.C. § 1651*.

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

25. Venue is proper in this district because Respondent-Defendant Warden of **Florida Soft Side South Detention Center**, is Petitioner's immediate custodian and under *28 U.S.C. § 1391(e)(1)* because Respondents-Defendants are officers of United States agencies, Petitioner currently resides within this District, and there is no real property involved in this action.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the Petitioner is not entitled

to relief. **28 U.S.C. § 2243**. If an OSC 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.*

24. 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).

25. Petitioner is “in custody” for the purpose of **§ 2241** because he is detained by Respondents at **Florida Soft Side South Detention Center**, an immigration detention facility, in Ochopee, Florida. Petitioner is under the direct control of Respondents and their agents.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

26. Petitioner is **37 (thirty-seven)** years old and came to the United States from Honduras, on **September 8, 2010**. Petitioner has resided in the United States continuously since then. Petitioner was withholding of removal on **March 3, 2001**. **(Exhibit A, Order of Withholding of Removal)**

27. Petitioner is neither a flight risk nor a danger to the community. ICE found that Petitioner was neither a flight risk nor danger to the community when it previously

released Petitioner from ICE detention under an order of withholding of removal for over five (5) years. Since then, Petitioner has fully abided by the order's terms, including attending regularly scheduled check-ins with ICE. Without any explanation, Petitioner was arrested and told that he would await removal to a third country.

28. Any country that he would be sent to is problematic for the Petitioner. Petitioner would have trouble living in the majority of the countries of the world due to his penchant for being persecuted for being gay.

29. This is why the Immigration Judge ordered the withholding of removal.

LEGAL FRAMEWORK

I. Withholding of Removal under the Immigration and Nationality Act

30. A noncitizen may not be removed to any country where it is more likely than not that they would be persecuted or tortured.

31. Under the INA, the Attorney General or the DHS Secretary may not remove a [noncitizen] to a country” where “the [noncitizen]’s life or freedom would be threatened in that country because of the [noncitizen]’s race, religion, membership in a particular social group, or political opinion.” 8 *U.S.C. § 1231(b)(3)(A)*. This form of

protection is known as “withholding of removal.” *See 8.C.F.R. § 208.16(a)*. It is mandatory.

32. When an Immigration Judge (“IJ”) grants withholding of removal to a noncitizen in removal proceedings, the IJ issues a removal order and simultaneously withholds that order with respect to the country or countries for which the noncitizen has demonstrated the requisite risk of persecution. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

33. Once withholding is granted, either party has the right to appeal that decision to the Board of Immigration Appeals (“BIA”) within 30 days. *See 8 C.F.R. § 1003.38(b)*. If both parties waive appeal or if neither party appeals within the 30-day period, the grant of withholding of removal and the accompanying removal order become administratively final. *8 C.F.R. § 1241.1*. If the Respondent reserves appeal and the time allotted for an appeal expires, the order of the immigration judge becomes administratively final “upon the expiration of the time allotted for an appeal.” *8 C.F.R. § 1241.1(c)*.

34. When a noncitizen has a final withholding grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution. *See 8 U.S.C. § 1231(b)(3)(A)*. While ICE is authorized to remove noncitizens granted withholding of removal to alternative countries, the INA specifies

restrictive criteria for identifying appropriate countries. *See 8 U.S.C. § 1231(b)(2)(D)-(E)*.

35. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings, including giving the noncitizen notice and an opportunity to express fear of deportation to that country, before ICE may effectuate the noncitizen's removal. *See Jama v. ICE*, 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, *see 8 C.F.R. §§ 208.16(c)(4), 208.17(a) (2004)[.]*"; *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. 2271.

II. Detention and Release of Noncitizens Granted Withholding of Removal

a. Statutory, Regulatory, and Constitutional Framework Limits Detention Beyond 90 Days

36. § 1231 of Title 8 of the U.S. Code governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8

U.S.C. § 1231(a)(1)(B).² The removal period lasts for 90 days, during which ICE “shall remove the [noncitizen] from the United States” and “shall detain the [noncitizen]” as it effectuates removal. *8 U.S.C. § 1231(a)(1)-(2)*. Even during the 90-day removal period, ICE may still exercise its discretion to release an individual from custody subject to an Order of Supervision. *See* Memorandum from Bo Cooper, INS General Counsel, Detention and Release During the Removal Period of Aliens Granted Withholding or Deferral of Removal (Apr. 21, 2000) (clarifying that even during the 90-day removal period, “the INS may – but is not required to – detain a non- criminal [non-citizen]”).

37. If an individual is not removed within the 90-day removal period, the INA presumes that such individual should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See 8 U.S.C. § 1231(a)(3)* (directing that if a noncitizen is not removed with the removal period, the noncitizen “shall be subject to supervision under regulations prescribed by the Attorney General”). The government may continue to detain certain noncitizens beyond the 90-day removal period only if they meet certain conditions, such as being inadmissible or deportable under specified statutory categories, or if they are determined to be a “risk to the community.” *8 U.S.C. § 1231(a)(6)*.

² There are two other events that trigger the start of the removal period, which are not applicable here. *See 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii)*.

38. For an individual not removed within the 90-day removal period, federal regulations require that ICE conduct a review of the noncitizen's records and make an individualized custody determination to either grant release or extend their custody. *See 8 C.F.R. § 241.4(a), (d), (h)(1).*

39. ICE must provide notice to the noncitizen "approximately 30 days in advance" of its record review "so that the [noncitizen] may submit information in writing in support of his or her release." *8 C.F.R. § 241.4(h)(2).*

40. In making a post-removal period custody determination, qualified officials must consider a number of enumerated factors that speak to the individual's danger to the community and risk of flight, "including ties to the United States." *8 C.F.R. § 241.4(f).*

41. In addition to these regulatory restrictions, the Fifth Amendment to U.S. Constitution requires that Respondents may not extend a noncitizen's detention under *8 U.S.C. § 1231* indefinitely beyond the 90-day period; "once removal is no longer foreseeable, continued detention is no longer authorized by statute." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (interpreting *§ 1231* in light of constitutional constraints). After the expiration of their removal period, noncitizens who believe their removal is

no longer reasonably foreseeable may initiate the special custody review process under **8 C.F.R. § 241.13**.

42. If the government seeks to extend a noncitizen's detention beyond six months, it is presumed that continued detention exceeds the "period reasonably necessary to effectuate removal." *Zadvydas*, 533 U.S. at 699-701. "[T]he six-month period runs from the beginning of the removal period, even if the noncitizen is not detained throughout that period." *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025); *see also Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (similar); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (similar).

43. Where "the detention in question exceeds a period reasonably necessary to secure removal," release is the proper remedy for unconstitutionally prolonged post-removal-order detention. *See Zadvydas*, 533 U.S. at 699-700.

b. ICE Policy Supports Prompt Release of Noncitizens Granted Withholding of Removal

44. Longstanding ICE policy favors the prompt release of noncitizens who have been granted protection, including withholding of removal. This policy was

established and extended through multiple memoranda and directives over the past twenty-five years (collectively, the “Withholding Release Policy”).³

45. In 2004, ICE established a presumption of release for noncitizens who had received a grant of protection: “In general, it is ICE policy to favor release of [noncitizens] 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.”).

46. In 2012, ICE leadership stated that the 2000 and 2004 memoranda favoring release are “still in effect and should be followed” and underscored that “[t]his policy applies at all times following a grant of protection[.]” Message from Gary Mead, ICE ERO Executive Assoc. Dir., Reminder on Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or CAT (Mar. 6, 2012).

47. Most recently, in 2021, Acting ICE Director Tae Johnson reiterated the agency’s position establishing a presumption of release for noncitizens granted protection and the exceptional circumstances standard: “Pursuant to this longstanding policy, absent exceptional circumstances ... noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released[.]” Message

³ These memoranda and directives are available at: https://www.acluva.org/app/uploads/2023/10/all_ice_policies_on_post-relief_release_2000-20211.pdf.

48. from Tae Johnson, ICE Acting Dir., REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed (Jun. 7, 2021) (hereinafter, “2021 ICE Withholding Release Policy Reminder”). Exceptional circumstances include “when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain.” *Id.* “[I]ndividual facts and circumstances ... should be considered in making [an exceptional circumstances] determination.” *Id.*

a. Revocation of Release on an Order of Supervision

47. Pursuant to federal regulation, once a noncitizen is released on an OSUP under *Section 1231(a)(3)*, that release may only be revoked by certain government officials and under certain circumstances. *See 8 C.F.R. § 241.4(l)(2)*.

48. Release on an OSUP may only be revoked by a qualifying official where one of four conditions have been met: “(i) The purposes of release have been served; (ii) The [noncitizen] violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a [noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.” *Id.*

49. Where a noncitizen’s release is revoked, the noncitizen must be notified of the reasons for revocation and afforded an opportunity to respond through “an initial

informal interview promptly after [their return to] custody.” *8 C.F.R. § 241.4(l)(1)*.

50. If a noncitizen is not released from custody following the informal interview, ICE Headquarters is required to schedule an additional custody review process. The noncitizen must be notified of a “records review and scheduling of an interview, which will ordinarily be expected to occur within three months after release is revoked.” *8 C.F.R. § 241.4(l)(3)*. “The custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” *Id.*

51. On information and belief, the Withholding Release Policy has not been rescinded.

I. Petitioner’s Grant of Withholding of Removal and Release on an Order of Supervision

52. On **March 3, 2021**, the IJ granted Mr. Moreno Rubio withholding of removal pursuant to *8 U.S.C. § 1231(b)(3)*, preventing his deportation to Honduras because he had established that he was more likely than not to be persecuted in Honduras if he were returned. Mr. Moreno Rubio was not able to have asylum granted because he did not comply with the one year filing of the asylum. (**Exhibit A, Order of Withholding of Removal**)

53. The **March 3, 2021**, order of the immigration judge indicates that Mr. **Moreno Rubio** waived appeal of the immigration judge's decision. (**Exhibit A, Order of Withholding of Removal**)

54. On **March 3, 2021**, ICE exercised its discretion to release Mr. **Moreno Rubio** from custody under *8 U.S.C. § 1231* on an OSUP. (**Exhibit B, Order of Supervision**)

55. The terms of Mr. **Moreno Rubio's** OSUP included that he must: (i) "appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal;" (ii) "not travel outside Florida for more than 48 hours" without notice and advance approval from ICE; (iii) provide written notice to ICE of "any changes of residence or employment 48 hours prior to such change;" (iv) report in person on March 22, 2021, at 8:00 AM at the ICE office at: see I-831; and (v) assist ICE "in obtaining any necessary travel documents." (**Exhibit B, Order of Supervision**)

56. Petitioner has applied for work authorization based on his grant of withholding of removal. On April 10, 2025, DHS granted Petitioner work authorization under the (A)(10) category, valid for a five-year period through April 9, 2030. (**Exhibit C, Employment Authorization Document**)

57. Following his release from immigration detention in March of 2021, Petitioner built his life in Florida, where he lived with his husband, Jose Ortega Iparraguirre. He studied English, and worked hard to have a life in Florida.

58. Petitioner complied with all terms of his OSUP.

59. Since Petitioner's release in March of 2021, ICE has never requested that Petitioner take any specific actions to obtain a travel document from any third country.

II. Respondents' Detention and Deportation Policies

60. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE to prioritize civil immigration enforcement procedures including through the use of mass detention.

61. On February 18, 2025, ICE issued a directive instructing ICE officers to review the cases of noncitizens granted withholding of removal "to determine the viability of removal to a third country and accordingly whether the [noncitizen] should

be re-detained” and, in the case of those who previously could not be removed because their countries of citizenship were unwilling to accept them, to “review for re-detention . . . in light of . . . potential for third country removals.” In its February 2025 memo, ICE reiterated its regulatory obligations, including regarding the process for revocation of release pursuant to *8 C.F.R. §§ 241.4 and 241.13*.

62. In late May 2025, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.⁴

⁴ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

63. On May 28, 2025, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁵

64. Following the directive from Respondent Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals”—individuals who by definition would not have warrants.⁶ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁷

65. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law. As one ICE official put it earlier this year, all that matters is “numbers, pure numbers, [q]uantity over quality.”⁸

⁵ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, Fox News (May 28, 2025), available at <https://www.foxnews.com/video/6373591405112> (last visited Aug. 24, 2025).

⁶ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>.

⁷ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>.

⁸ Jennie Taer, *Trump admin’s 3,000 ICE arrests per day quota is taking focus off criminals and ‘killing morale’: insiders warn*, NY Post, June 17, 2025, <https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/>, <https://perma.cc/DB9R-MJUC> (last visited Oct. 15, 2025) (“The Trump administration’s mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. ‘All that matters is numbers, pure numbers. Quantity over quality,’ one Immigrations and Customs Enforcement insider told The Post.”).

66. On June 15, 2025, President Trump ordered ICE officers to “do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”⁹²

67. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

68. 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).

69. Petitioner has no remedy other than Habeas Corpus.

70. On information and belief, Respondents have identified no third country of removal to which they are actually attempting to remove Petitioner.

71. On information and belief, Petitioner’s removal is not likely in the reasonably foreseeable future.

⁹² Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (“ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”).

72. ICE's revocation of an order of supervision is a final agency action subject to this Court's review.

73. The revocation here marked the consummation of ICE's decision-making process regarding Petitioner's custody.

74. 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 Agencies to Follow Internal Rules

75. 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.").

76. *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).

77. 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 Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Not in Accordance with Law, In Excess of Statutory Authority, Abuse of Discretion (Unlawful Re-Detention)

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

79. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;”

“contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law”. 5 U.S.C. § 706(2)(A)-(D).

80. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

81. The INA provides that Respondents may, as they did in Petitioner’s case, release an individual, who is subject to a removal order, on an OSUP if appropriate or statutorily required. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(a). Any person released under such circumstances “shall be released pursuant to an order of supervision.” 8 C.F.R. § 241.5(a).

82. Specified ICE officials may revoke supervised release “in the exercise of discretion,” but only subject to formal processes and findings. 8 C.F.R. § 241.4(l)(1)-(2).

83. The language of 8 C.F.R. § 241.4(l) specifically limits the power of anyone who is not the Executive Associate Director to revoke release. For example, it provides

that “[a] district director may also revoke release of a [noncitizen] when”—and only when—“in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” Thus, before a district director can revoke release, the district director must make certain findings.

84. A noncitizen’s release may be revoked “in the exercise of discretion” when, in the opinion of the revoking official, “[t]he purposes of release have been served,” the noncitizen “violates any condition of release,” revocation “is appropriate to enforce a removal order or to commence removal proceedings against [the noncitizen],” or “[t]he conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.” *8 C.F.R. § 241.4(l)(2)*.

85. On information and belief, Petitioner complied with all of the conditions of his release on an OSUP; indeed, he was reporting to ICE as directed when he was detained. No facts or circumstances changed for Petitioner that would alter Respondents’ assessment of his risk of flight or his danger to the community. To the contrary, since his release in June 2024, Petitioner has been living with his husband and engaging in his local community through employment and schooling.

86. Petitioner has no criminal convictions, and ICE did not seek his cooperation to obtain travel documents to any third country prior to his re-detention.

87. By arbitrarily re-detaining Petitioner without making the requisite findings and without considering Petitioner’s individualized facts and circumstances, Respondents have violated the INA and federal regulations. *See Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025) (granting habeas relief after finding ICE violated 8 C.F.R. § 241.4(l) when it did not afford petitioner an informal interview or an opportunity to respond to the reasons for revocation); *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (noting that notwithstanding ICE’s discretion to execute a removal order, ICE “cannot remove” a noncitizen—even one subject to a final removal order— “in any manner [it] please[s]”); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) (“[W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged deportation proceeding is invalid and a remand to the agency is required”— even in the absence of a showing of prejudice.).

88. Respondents’ conduct is not in accordance with law and in excess of statutory authority in violation of the APA.

COUNT TWO

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the
Immigration and Nationality Act – 8 U.S.C. § 1231,
and the Accardi Doctrine with Respect to the Withholding Release Policy
Not in Accordance with Law, In Excess of Statutory Authority, Abuse of
Discretion (Unlawful Indefinite Detention)**

89. Petitioner restates and realleges all paragraphs as if fully set forth here.

90. Under the APA, a court shall “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” *5 U.S.C. § 706(2)(A)*. An agency must also follow its own procedures or regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *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.”).

91. First, as interpreted by the Supreme Court, *8 U.S.C. § 1231(a)(6)* authorizes detention beyond the 90-day removal period only for a “period reasonably necessary to bring about the [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 701.

92. Here, Petitioner’s removal order became administratively final on March 3, 2021, over five (5) years ago.

93. On information and belief, within that time, including in Petitioner's detention at **Florida Soft Side South Detention Center**, Respondents have made no actual efforts to remove Petitioner to a specifically identified third country.

94. On information and belief, Petitioner has not engaged in any conduct to trigger an extension of the removal period under **8 U.S.C. § 1231(a)(1)(C)**.

95. Because it has been more than six months since Petitioner's removal order became administratively final, it is presumed that his removal is no longer reasonably foreseeable. See *Zadvydas*, 533 U.S. at 699-701; *see also Zavvar*, 2025 WL 2592543, at *4 ("[T]he six-month period runs from the beginning of the removal period, even if the noncitizen is not detained throughout that period."); *Tadros*, 2025 WL 1678501, at *3 (similar); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (similar).

96. Second, following the 90-day removal period defined in 8 U.S.C. § 1231(a), DHS must follow its regulatory procedures to conduct a review of the noncitizen's records and to make an individualized custody determination to either grant release or extend their custody. See **8 C.F.R. § 241.4(a), (d), (h)(1)**.

97. Here, during and since Petitioner's arrest in March of 2026, Respondents have provided Petitioner with no individualized custody determination as required to justify his detention beyond the 90-day removal period. See **8 U.S.C. § 1231(a)(3), (6)**;

8 C.F.R. §§ 241.4, 241.14. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

98. Third, pursuant to the “longstanding” Withholding Release Policy, “absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released[.]” Acting ICE Director Tae Johnson, 2021 ICE Withholding Release Policy Reminder (emphasis added).

99. Here, during and since Petitioner’s arrest, Respondents have also not conducted an individualized review of Petitioner’s detention under the “exceptional circumstances” standard as required by the Withholding Release Policy. On information and belief, if Respondents conducted such a review, Petitioner would be released from immigration detention.

100. By detaining Petitioner beyond his removal period when removal is not reasonably foreseeable, Respondents have violated the APA. Respondents have also independently violated the APA by detaining Petitioner without providing any individualized custody determination under either the regulations or the Withholding Release Policy.

COUNT THREE

Violation of Fifth Amendment Right to Substantive Due Process (Unlawful Re-detention and Indefinite Detention)

101. Petitioner restates and realleges all paragraphs as if fully set forth here.

102. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty 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 Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (*citing Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

103. Civil immigration detention violates substantive due process if it is not reasonably related to its statutory purpose. See *id.* at 690 (*citing Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003). (*citing Zadvydas*, 533 U.S. at 690).

104. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 514-15.

105. Petitioner’s detention is not reasonably related to the primary statutory purpose of ensuring imminent removal. His prolonged civil detention has extended well beyond the end of the removal period and will continue into the indefinite future.

106. ICE has had over five (5) years to effectuate Petitioner's removal. During that time, Respondents have not initiated any process to remove Petitioner to a third country. There is no significant likelihood of his removal in the reasonably foreseeable future. Nor have any other facts or circumstances changed for Petitioner that would change Respondents' assessment of his risk of flight or his danger to the community. To the contrary, since his release in March of 2021, Petitioner has developed strong ties to his community in south Florida.

107. Mr. **Moreno Rubio's** continued detention is unrelated to the purposes justifying civil immigration detention as a constitutional matter and contravenes the Substantive Due Process protections of the Fifth Amendment.

COUNT FOUR

Violation of Fifth Amendment Right to Procedural Due Process (Unlawful Re-detention and Indefinite Detention)

108. Petitioner restates and realleges all paragraphs as if fully set forth here.

109. Basic due process doctrine provides that an individual must be afforded requisite process, including notice and an opportunity to be heard, before being deprived of a liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Prolonged civil detention violates procedural due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at

690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v. Hendricks*, 521 U.S. at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-52 (1987).

110. While the government has discretion to detain individuals under 8 U.S.C. § 1231 and to revoke custody decisions pursuant to the same authority, this discretion is not “unlimited.” *See Zadvydas*, 533 U.S. at 698. Additionally, when agencies fail to adhere to their own policies as required by *Accardi*, the result can be 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).

111. Here, Mr. **Moreno Rubio** has been deprived of his liberty without the process due at every stage of his re-detention and now indefinite detention, resulting in several independent violations of his due process rights.

112. First, Respondents have re-detained Petitioner in an arbitrary manner and without the formal processes and findings that are required by statute and regulation in order to revoke his March 2021 OSUP. *See 8 C.F.R. § 241.4(l)(1)-(3)*. Because no individualized determination for revocation has been made and because Petitioner has not been afforded any notice or an opportunity to respond to the reasons for revocation,

Respondents' categorical revocation of Petitioner's release violates Petitioner's right to procedural due process.

113. Second, Respondents have continued to detain Petitioner without affording him the very process required either under its own regulations under 8 C.F.R. § 214.13 or the Withholding Release Policy, in further violation of due process. Despite Petitioner's request for release, on information and belief, ICE has not completed any post-order custody review, let alone constitutionally adequate review.

114. Petitioner's detention thus violates procedural due process.

115. No change in circumstances warranted the order's revocation.

116. 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.

117. 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.

118. Even assuming that regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, Respondents did not comply with them.

119. 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.

120. 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.

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

122. 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.

123. Third, Respondents failed to consider reasonable alternatives to revoking Petitioner's order of supervision that were before the agency, like simply continuing release under the order of supervision and scheduling a future time and date to appear for removal.

124. 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.

125. 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.

126. For these and other reasons, Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious and should be held unlawful and set aside.

COUNT FIVE

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

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

128. 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).

129. "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).

130. 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.

131. Even then, if removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by § 1231(a)(6).

132. 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.

133. 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)

134. Respondents’ revocation of Petitioner’s order of supervision was based on ultra vires regulations. So, it was in excess of statutory authority and should be held unlawful and set aside.

COUNT SIX

Ultra Vires Action

135. Petitioners reallege all paragraphs above as if fully set forth here.

136. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner.

137. 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

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

139. 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”).

140. 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).

141. 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.

142. 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 requests that this Court:

- a. Exercise 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. Award Petitioner costs and reasonable attorneys' fees; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

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/s/ Julio Gutierrez

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: March 8, 2026

MIAMI, FLORIDA

/s/ Julio Gutierrez
Attorney for Petitioner-Plaintiff