

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANGEL MANUEL GARCIA

Petitioner,

v.

KEVIN GUTHRIE, in his official capacity as
Director of the Florida Division of Emergency
Management (FDEM), et al.

Respondents.

Case No.: 2:26-cv-00791-KCD-NPM

Agency File: A



**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO
"ORDER TO SHOW CAUSE"**

Petitioner filed a Petition for Writ of Habeas Corpus. This Court issued an Order to Show Cause. Respondents filed a Response to the order to show cause. Petitioner is replying to Respondent's Response *to the order to show cause*.

I- INTRODUCTION

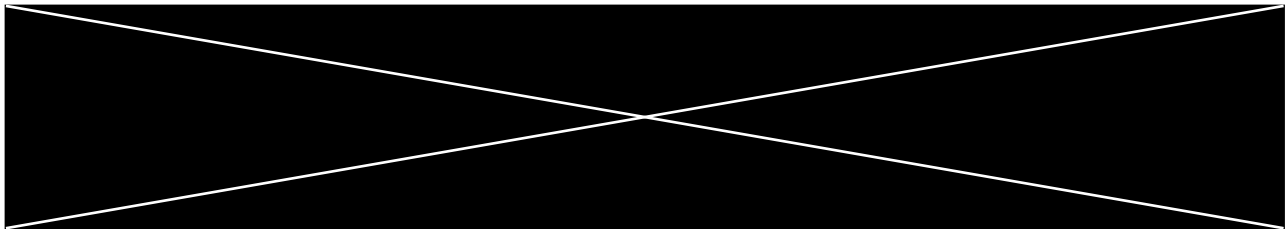
Petitioner Angel Manuel Garcia ("Garcia") is a native and citizen of Guatemala. He was born in 1973 and is currently fifty-two years old. On or about December 14th, 1994, when Garcia was twenty-one (21) years old, he entered the United States without inspection. On May 23rd, 1997, the Miami, FL Immigration Court issued an order of voluntary departure to him. That order eventually became an order of removal. In 1997, ICE-ERO issued an order of supervision to Garcia, twenty-nine (29) years ago. Garcia has been complying with that order. On June 22nd, 2023, U.S. Citizenship and Immigration Services (USCIS) granted valid Garcia Deferred Action. USCIS issued an Informational letter indicating that the evidence Garcia submitted with his petition appeared to demonstrate that he had established the eligibility requirements for U nonimmigrant status. It further indicated that because the statutory cap for U nonimmigrant visas

had been reached for the fiscal year, USCIS placed him on a waitlist and granted him deferred action as permitted under 8 C.F.R. § 274a.12(c)(14). Garcia currently has employment authorization pursuant to that deferred action valid from 6/15/2023 to 6/15/2027. Garcia had applied for a “U Visa” as the victim of a crime on November 20th, 2018.

On March 8th, 2026, the respondent (who had a valid driver’s license) was involved in an “civil traffic violation” (*emphasis added “civil” not “criminal”*) in Palm Beach County, FL *for which no traffic ticket was issued* by the Palm Beach Sheriff’s office. He was immediately thereafter sent to ICE. ICE revoked Garcia’s Order of Supervision and took him into custody, *notwithstanding his active deferred action status* and despite the absence of any removal or departure plan. In doing so, ICE failed to make any individualized findings that Garcia posed a danger to the community or a risk of flight, as required by statute and regulation. See, 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4(1), 241.13(1). ICE’s action contravenes its own regulations, which prohibit revocation of supervision absent changed circumstances and require notice and procedural safeguards.

Garcia is the stepfather of four U.S. Citizen children ages 15, 17, 19, and 20. The “real father of the kids” is nowhere to be found.

Gracia is diabetic type II and has not been given his medication since he was detained.



The revocation of Garcia’s Order of Supervision and his resulting detention is arbitrary, punitive, and unlawful under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231(a)(6), and violate the Due Process Clause of the Fifth Amendment. Garcia’s continued detention serves no legitimate removal-related purpose where DHS has identified no removal or departure plan, has long permitted him to reside in the community under supervision, and has affirmatively granted him deferred action. Under these circumstances, detention is not reasonably related to effectuating removal and directly contravenes the constitutional and statutory principles articulated in *Zadvydas v. Davis*, 533 U.S. 678(2001), and its progeny, which prohibit continued detention where removal is not reasonably foreseeable as a practical matter.

In light of these facts, Garcia's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and the constitutional principles articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001). After more than seven years of full compliance under supervision, while benefiting from active deferred action status and placement on the U-visa waitlist, ICE arbitrarily revoked his Order of Supervision and detained him without justification and in violation of the governing regulations. See, 8 C.F.R. § 241.4(1)(2); 241.13(). His continued detention is not reasonably related to effectuating removal, serves no legitimate governmental purpose, contravenes due process, and warrants immediate judicial intervention.

**II- THE REVOCATION OF GARCIA'S ORDER OF SUPERVISION AND HIS
RESULTING DETENTION IS ARBITRARY, PUNITIVE, AND UNLAWFUL
UNDER THE IMMIGRATION AND NATIONALITY ACT ("INA"), 8 U.S.C. §
1231(A)(6), AND VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT.**

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein. 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 and is causing Garcia substantial and irreparable harm. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors in determining whether procedural due process has been 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 would entail.

The first factor, the private interest at issue, strongly favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690.

The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also weighs heavily in Petitioner's favor. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an Order of Supervision

can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents ignored these statutory and regulatory requirements, rendering the risk of erroneous deprivation of liberty not merely high but inevitable. Requiring Respondents to provide notice and an opportunity to respond before revoking an Order of Supervision is of great value, because it reduces the risk of wrongful detention, particularly for individuals like Petitioner, who are neither dangerous nor flight risks.

The third factor, the government's interest, likewise favors Petitioner. When the government disregards the legal requirements of notice and an opportunity to be heard before revoking an Order of Supervision, it expends scarce financial and administrative resources on the unnecessary detention of individuals who are neither flight risks nor dangers to the community. Such arbitrary action undermines, rather than advances, the efficiency and integrity of the immigration system. Moreover, by forcing detainees to seek judicial intervention through habeas corpus proceedings, the government further burdens itself with avoidable litigation. Ensuring notice and a meaningful opportunity to respond prior to revocation would, in contrast, conserve governmental resources and promote lawful and efficient enforcement.

For these reasons, revoking Petitioner's Order of Supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

III- VIOLATION OF THE SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein. 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). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690.

Petitioner's detention is governed by the post-removal order detention statute, 8 U.S.C. § 1231(a), because he has been subject to a final order of removal since 1997. The U.S. government did not remove Petitioner during the 90-day removal period, and he was subsequently issued an

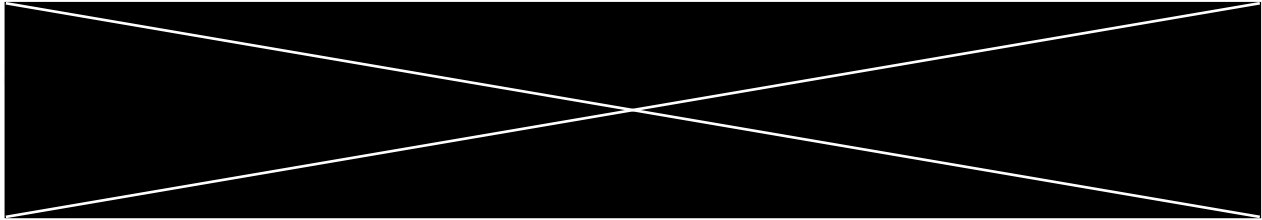
Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3). In issuing the Order of Supervision, ICE necessarily determined that Petitioner poses neither a danger to the community nor a flight risk. Petitioner remained under an Order of Supervision for over twenty-nine (29) years, during which he fully and consistently complied with every condition imposed. Notwithstanding this unbroken record of compliance, Respondents revoked the Order of Supervision and took Petitioner into custody on March 15th, 2026 as a result of civil traffic stop, without any change in circumstances or individualized justification to warrant such action. To comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 241 (5th Cir. 2018).

Consistent with due process, the only legitimate purposes of federal civil immigration detention are to *prevent flight risk*, ensure a noncitizen's appearance for a legal hearing adjudicating their status or potential removal, *or to otherwise ensure the safety of the community*. *Zadvydas*, 533 U.S. at 690-91.

The Due Process Clause requires that any deprivation of liberty be narrowly tailored to serve a compelling government interest. See, *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying a less rigorous standard for "deportable [noncitizens]").

Here, Garcia's detention bears no reasonable relationship to any legitimate purpose. For more than twenty-nine (29) years, Garcia resided in the community pursuant to an Order of Supervision and fully complied with every condition imposed by ICE. During that period, DHS affirmatively chose not to effectuate his removal, repeatedly exercising discretion in his favor placing him under supervision and *granting him deferred action*. *Garcia's lengthy and unbroken history of compliance conclusively demonstrates that he poses neither a flight risk nor a danger to the community*. In the absence of any individualized findings to the contrary or any articulated removal plan, his continued detention is arbitrary and unsupported by the statutory purposes of civil immigration detention, which are limited to preventing danger to the community or risk of flight prior to removal. Detention is constitutional only when it serves a lawful and legitimate purpose, and here, it serves none.

Gracia is diabetic type II and has not been given his medication since he was detained.



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 and is causing Garcia substantial and irreparable harm.

IV- VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,

5 U.S.C. § 706 (2)(A), (B), CONTRARY TO LAW AND CONSTITUTIONAL RIGHT

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein. The Administrative Procedure Act ("APA") provides that a reviewing court shall "hold unlawful and set aside agency action" that is "... otherwise not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity". 5 U.S.C. § 706(2)(A), (B). The Supreme Court has clarified that 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." See, *FCC v. NextWave Pers. Comm. ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

Respondents' revocation of Petitioner's Order of Supervision was both unconstitutional and unlawful. As detailed in the Statutory Framework above, the revocation violated the Fifth Amendment Due Process Clause and contravened the Immigration and Nationality Act ("INA") and its implementing regulations which strictly define who may lawfully revoke an Order of Supervision and under what circumstances.

Petitioner's Order of Supervision was not revoked by the ICE Executive Associate Director. *The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.*

Before revoking the order, Respondents failed to make findings that Petitioner was either a danger to the community or unlikely to comply with a removal order, as required by statute.

Even assuming the validity of regulations purporting to provide additional justifications for

revocation of an Order of Supervision, Respondents did not comply with them. 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.

Respondents also failed to provide Petitioner with notice of the reasons for revocation and an opportunity to be heard prior to his re-detention.

For these reasons, the revocation of Petitioner's Order of Supervision was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations. Accordingly, it must be held unlawful and set aside.

V- VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,

5 U.S.C. § 706(2)(A)

"ARBITRARY AND CAPRICIOUS"

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein. Under the Administrative Procedure Act ("APA"), a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

An agency action is arbitrary and capricious when it "runs counter to the evidence before the agency". *See, Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

Respondents' revocation of Petitioner's Order of Supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as set forth above.

Respondents' decision to revoke Petitioner's Order of Supervision ran directly 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 Order of Supervision, *and no new facts or changed circumstances* suggest he would fail to comply with a removal demand if issued. *The respondent was involved in a "civil traffic violation" for which no traffic ticket was issued (emphasis added).*

Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's Order of Supervision without notice and an opportunity to respond. Respondents failed to consider the substantial fiscal and administrative burden to the agency caused by detaining a

person who poses no risk of flight or danger to the community and for whom the agency lacks the travel documents necessary to effectuate removal. Such unnecessary detention drains limited resources and diverts them from legitimate enforcement priorities. Respondents failed to consider reasonable and less burdensome alternatives that were available, such as continuing release under the Order of Supervision and setting a future time and date to appear for removal. This alternative would have advanced the government's interest in effectuating a removal order without resorting to the Petitioner's unlawful detention.

For these and other reasons, Respondents' revocation of Petitioner's Order of Supervision is arbitrary, capricious, and not in accordance with law, and should be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

VI- VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
5 U.S.C. § 706(2)(C)
"IN EXCESS OF STATUTORY AUTHORITY"

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

Under the Administrative Procedures Act ("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).

"An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *See, FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances...." *Zachvydas v. Davis*, 533 U.S. 678, 699-700.

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).

Respondents’ revocation of Petitioner’s Order of Supervision relied on regulations that are ultra vires. Accordingly, the revocation was in excess of statutory authority and must be held unlawful and set aside.

VII- VIOLATION OF THE ACCARDI DOCTRINE

Petitioner realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

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”).

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.” *Cesay 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); *MSL 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).

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 of Supervision without advance notice.

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.

VIII- CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and this Reply to Respondent's Response to Order to Show Cause, the undersigned urges the Court to grant the petition for Habeas Corpus.

Respectfully submitted,

/s/ Alejandro Roque

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Dated April 13th, 2026

CERTIFICATE OF SERVICE

I hereby certify that on April 13th, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Alejandro Roque

Alejandro Roque, Esq.

Florida Bar No. 77597

Counsel for Petitioner