

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

ALEJANDRO EDUARDO DELGADO  
DE ARMAS,<sup>1</sup>

Petitioner,

v.

WARDEN, Florida Soft Side South facility, in  
his official capacity;

KELIE WALKER, in her official capacity as  
Field Office Director of U.S. Immigration and  
Customs Enforcement Miami Field Office;

Respondents.

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

1. Petitioner, Alejandro Eduardo Delgado de Armas (hereinafter “Mr. Delgado” or Petitioner), is a sixty-three (63) year old national of Cuba who has resided in the United States since 1980. After decades spent building his life in the United States, he is languishing in custody after the unlawful revocation of his order of supervision. *See* Ex. A, ICE Locator Results. Moreover, the presumptively reasonable period for Mr. Delgado’s removal expired on May 24, 1999, six months after his order of removal became administratively final. Finally, Mr. Delgado’s detention is unlawful because the 287(g) program that Respondents cite as governing his detention does not authorize large-scale state detention operations in the absence of a valid

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<sup>1</sup> Petitioner’s legal name is Alejandro Eduardo Delgado de Armas. Respondents have listed Petitioner’s name incorrectly in their records as “Eduardo Alejandro Delgado de Armas.” *See* Ex. B, Mr. Delgado’s Automated Case Information System.

intergovernmental services agreement (“IGSA”) permitting U.S. Immigration and Customs Enforcement (“ICE”) to delegate detention authority to a Florida state agency.

2. Mr. Delgado first arrived in the United States as part of the Mariel boatlift and was paroled into the United States. He was ordered removed on or about November 24, 1998, in the Philadelphia Immigration Court. *See* Ex. B, Mr. Delgado’s Automated Case Information System.

3. Mr. Delgado was released under an Order of Supervision (“OSUP”), after ICE determined that he did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)-(h). Once an OSUP has been granted, ICE’s own regulations govern when, how, and who can revoke it. *See* 8 C.F.R. §§ 241.4(l), 241.13(i). These regulations provide core procedural protections; they guard against arbitrary revocation by low-level officers and require both notice and an opportunity to be heard. As shown *infra*, for historical and policy reasons embodied in federal regulations, Mariel Cubans have a distinct overlay of procedural protections than those generally available within the regulatory framework for OSUP revocation.

4. On information and belief, prior to his release under the OSUP, Mr. Delgado was held in detention by immigration officials for approximately eighteen (18) months between around 2000 and 2002.

5. On November 19, 2025, Mr. Delgado appeared for his regularly scheduled reporting in compliance with his OSUP. Despite his compliance with all ICE reporting requirements, he was taken into custody and is currently being detained at the Florida Soft Side South facility in Ochopee, Florida, also known as Alligator Alcatraz (hereinafter “Alligator Alcatraz”).

6. Mr. Delago recalls that at the time of his arrest, ICE advised him that because he had committed a crime in the United States, he could not remain in the country. ICE did not provide Mr. Delgado with a meaningful opportunity to respond to the revocation. If ICE had meaningfully interviewed Mr. Delgado and afforded him an opportunity to respond to the reasons for revocation, as required by their own regulations, 8 CFR § 212.12(d)(4)(ii); 241.4(l), they would have learned that he has complied with ICE's OSUP annual reporting requirements and that ICE's prior determination that his removal is not reasonably foreseeable has not materially changed.

7. Following Mr. Delgado's arrest, he recalls that ICE transported him to Texas on or around February 6, 2026 in an attempt to remove him to Mexico, a country of which he is neither a citizen nor national. Mr. Delgado has never been to Mexico, has no ties in the country, and, at his age, no work prospects in the country. He has no copy in his possession of any notice designating a third country for his removal or any opportunity to rebut that designation. He fears being removed to Mexico given country conditions including drug-related crime and cartel activity. ICE was unable to effectuate removal to Mexico. ICE returned Mr. Delgado to Alligator Alcatraz, where he remains at the time of filing of this petition.

8. Respondents violated federal regulations by revoking Mr. Delgado's OSUP under 8 C.F.R. § 241.4(l) (governing procedures for OSUP revocation) and 8 C.F.R. § 212.12 (governing the continued detention of Mariel Cubans specifically during removal efforts or parole revocation). Once an OSUP has been granted, ICE's own regulations govern when, how, and by whom it can be revoked. *See* 8 C.F.R. §§ 241.4(a)(l), 241.13(b)(3)(i). Mr. Delgado always complied with the annual reporting requirements of his OSUP, thus the conditions supporting his release remain unchanged. ICE provided no meaningful opportunity to respond before revoking his supervision

order and taking him into custody, in violation of both agency regulations and his Fifth Amendment rights. Therefore, revocation was unlawful.

9. Notably, Mr. Delgado's detention highlights a fundamental misapplication of ICE's cited authority. Generic Notices of Revocation of Release rely on 8 C.F.R. § 241.4, which governs custody determinations generally. However, 8 C.F.R. § 241.4(b)(2) explicitly excludes Mariel Cubans from its scope. The re-detention, parole, or revocation of parole for Mariel Cubans is instead governed by 8 C.F.R. § 212.12. By relying on § 241.4 rather than following § 212.12, ICE failed to apply the regulatory provisions specifically designed to protect Mariel Cubans, compounding the procedural and due process violations identified above. Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). By disregarding the mandatory procedures of 8 C.F.R. §§ 241.4(b)(2), 241.13, and 212.12, ICE's detention is procedurally defective and therefore unlawful.

10. The presumptively reasonable period for Mr. Delgado's removal has expired, and Respondents bear the burden of justifying any further detention. When a noncitizen is ordered removed, 8 U.S.C. § 1231(a) authorizes detention for 90 days, during which the "Attorney General shall remove the [noncitizen] from the United States." With two exceptions not relevant here, the removal period begins on the date that the order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i-iii). Detention beyond that period is subject to constitutional limitations. *Zadvydas v. Davis*, 533 U.S. 678, 680 (2001). Recognizing that the government could not effectuate all removals within 90 days of the issuance of a final order, *Zadvydas* limited post-order detention to a period "reasonably necessary" to secure removal and held that six months of post-order detention was "presumptively reasonable." *Id.* at 701. After six months, if the noncitizen

shows good reason to believe a removal is not reasonably foreseeable, the burden shifts to the government to justify further detention. *Id.*

11. Lastly, Mr. Delgado is detained at Alligator Alcatraz without legal authority. Respondents have elsewhere claimed that Florida is detaining noncitizens at the facility pursuant to the 287(g) program, codified at 8 U.S.C. § 1357(g). But § 1357(g) does not provide any authority for state policy to conduct large-scale detention operations, and has never before been used for that purpose. What is more, Respondents have no valid contract or inter-governmental services agreement authorizing ICE to delegate the housing and care of immigrant detainees to a Florida state agency.

12. Mr. Delgado is of advanced age and has strong ties in the United States that he has accumulated over the more than four decades he has resided in this country. He suffers from diabetes, a serious condition and disability with fatal consequences if mismanaged. Moreover, Amnesty International<sup>2</sup> has documented systemic abuses at the site of Mr. Delgado's confinement, a state-run facility facing mounting criticism for human rights violations, including torture and other inhumane conditions, *inter alia*.

### **CUSTODY**

13. Mr. Delgado satisfies the "in custody" requirement for habeas review because he is currently being physically detained by ICE Miami Office of Enforcement and Removal Operations ("ICE-ERO") at Alligator Alcatraz in Ochopee, Florida.

### **JURISDICTION**

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<sup>2</sup> Amnesty Int'l, *Torture and Enforced Disappearances in the Sunshine State: Human Rights Violations at "Alligator Alcatraz" and Krome in Florida* (Dec. 4, 2025), <https://www.amnestyusa.org/wp-content/uploads/2025/12/Torture-and-Enforced-Disappearances-in-the-Sunshine-State-Human-Rights-Violations-at-Alligator-Alcatraz-and-Krome-in-Florida.pdf>.

14. This 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). Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus claims by noncitizens challenging “the constitutionality of the entire statutory scheme under the Fifth Amendment.”<sup>3</sup> This case arises under the United States Constitution; the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment. This Court has remedial authority under its inherent authority and the All Writs Act, 28 U.S.C. §1651.

15. Furthermore, 28 U.S.C. §2241 authorizes district courts to grant writs of habeas corpus to individuals “in custody in violation of the Constitution or laws or treaties of the United States.” Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention as well as claims by noncitizens seeking to protect their due process rights. *See Jennings v. Rodriguez*, 583 U.S. 281, 293-96 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S. at 687. Mr. Delgado is currently detained by ICE within this judicial district, satisfying the “in custody” requirement at the time of filing. *See Zadvydas; Demore*.

16. This Court further has jurisdiction under Article I, Section 9, Clause 2 of the U.S. Constitution, the Suspension Clause, which guarantees the availability of the writ of habeas corpus except in cases of rebellion or invasion.

17. The claims raised herein are not barred by 8 U.S.C. § 1252, as Mr. Delgado is not challenging the validity of a final order of removal, but rather the legality of detention in violation

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<sup>3</sup> *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). District courts also have jurisdiction to review “collateral challenges to unconstitutional practices and policies” used by Respondents in reaching their decision. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 896 (1991).

of federal regulations and the due process under the Fifth Amendment. *See Clark v. Martinez*, 543 U.S. 371 (2005) (extending *Zadvydas* to inadmissible noncitizens).

18. Interpreting § 1252(g) as barring judicial review of these claims risks conflicting with the Supreme Court’s instruction that § 1252(g) is not a broad jurisdictional limitation on “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999); *see also Grigorian v. U.S. Atty. Gen.*, No. 1:25-cv-22914 (S.D. Fla. Sept. 9, 2025). Indeed, the Supreme Court has emphasized that 28 U.S.C. § 2241 provides federal courts with jurisdiction to consider challenges to the lawfulness of immigration-related detention. *Zadvydas*, 533 U.S. at 687.

### **VENUE**

19. Venue is proper because Mr. Delgado is detained in ICE custody at Florida Soft Side South in Ochopee, Florida, within the geographical confines of the Middle District of Florida. *See* 28 U.S.C. § 1391(e)(1)(B), 28 U.S.C. § 1391(e)(1)(C); 28 U.S.C. § 2241(d).

### **REQUIREMENTS OF 28 U.S.C. § 2243**

20. 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.*

21. 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**

22. Mr. Delgado is a citizen of Cuba who entered the U.S. during the Mariel boatlift in 1980. He is currently detained at Alligator Alcatraz. Despite complying with the annual reporting requirements of his order of supervision, ICE arbitrarily detained him on November 19, 2025 at his last check-in.

23. Respondent, Warden of Florida Soft Side South facility, also known as Alligator Alcatraz, is sued in his official capacity.

24. Respondent Kelie Walker is the Acting Field Office Director for the ICE Miami Office of Enforcement and Removal Operations. In this capacity, she has jurisdiction over Mr. Delgado as his legal custodian. Ms. Walker is sued in her official capacity, as well as any other individual officially occupying the office of Miami ICE Field Office Director subsequent to her departure from that office.

### **FACTUAL AND PROCEDURAL HISTORY**

25. Mr. Delgado is a sixty-three (63) year old national of Cuba who has resided in the United States for over four decades. He suffers from diabetes which requires ongoing medical care, monitoring, and prescribed medication.

26. On information and belief, Mr. Delgado first arrived in the United States around June 31, 1980 as part of the Mariel boatlift and is considered to have been admitted as a refugee. *See* Refugee Education Assistance Act of 1980, Pub. L. No. 96–422, § 501(e), 94 Stat. 1799 (1980), *reprinted at* 8 U.S.C.A. § 1522 note (1985). On November 24, 1998, an immigration

judge in Philadelphia, Pennsylvania issued a removal order. *See* Ex. B, Mr. Delgado's Automated Case Information System.

27. Following those removal proceedings, Mr. Delgado was released under an Order of Supervision ("OSUP"), under which he has complied fully with all annual reporting requirements.

28. On or about November 19, 2025, Mr. Delgado appeared for his regularly scheduled reporting in compliance with his OSUP. Despite his full compliance with reporting requirements, ICE revoked his OSUP and detained him without notice and opportunity to respond in compliance with 8 C.F.R. § 212.12 or § 241.4.. He is currently detained at Alligator Alcatraz. *See* Ex. A, ICE Locator Results.

29. Mr. Delgado received some paperwork from ICE upon his arrest. The paperwork is only in English. Upon information, knowledge, and belief, and in light of Respondents' conduct vis-à-vis the other Mariel detainees at Alligator Alcatraz, if Mr. Delgado received a notice, it would have indicated that Mr. Delgado's case had been reviewed and that ICE had determined he would be detained based on ICE's conclusion that there is a significant likelihood of removal in the reasonably foreseeable future. The notice likely cited ICE's authority pursuant to 8 C.F.R. §§ 241.4 and 241.13 and stated that Mr. Delgado is entitled to a prompt informal interview at which he may respond and submit evidence demonstrating that his removal is unlikely. The notice likely further indicated that, if release is not granted following the interview, Mr. Delgado will receive notification of a subsequent custody review scheduled to occur three months from the date of the notice.

30. Had Mr. Delgado been provided with a meaningful interview as required by law, he would have offered further evidence of his medical needs, his compliance with annual reporting

requirements, and, most importantly, the lack of changed circumstances regarding foreseeability of removal since his OSUP was put in place. In fact, the relationship between the U.S. and Cuba, as has been widely reported on international news, has only deteriorated, as discussed *infra*.

**Violations of Due Process, Federal Statutes and Regulations, and the *Accardi* Doctrine**

a. **Respondents failed to comply with their own regulations in revoking Mr. Delgado's Order of Supervision**

31. Mr. Delgado entered the United States as part of the 1980 Mariel boatlift, a unique historical event that has long shaped the United States' repatriation policies toward Cuba. On information and belief, Mr. Delgado was previously released on an OSUP after the government determined that he did not present a danger to the community, did not present a flight risk, and/or was not likely to be removed in the reasonably foreseeable future. The conditions surrounding this decision have not changed so as to undermine the basis of his OSUP and warrant his detention.

32. For decades, the U.S. government has recognized the practical and diplomatic barriers to returning Mariel Cubans, particularly those like Mr. Delgado whom Cuba has never agreed to accept.<sup>4</sup> These longstanding barriers remain firmly in place today. Indeed, U.S.–Cuba relations have deteriorated significantly in recent years, resulting in reduced diplomatic engagement, limited consular functions, and repeated public reporting that repatriation negotiations between the two governments have stalled.<sup>5</sup> The Cuban government continues to

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<sup>4</sup> See Central Intelligence Agency, *Cuban Excludables* (Discussion Paper, declassified and approved for release on April 18, 2011), CIA-RDP84B00049R000701760003-3 (internal CIA document noting that Cuba “refused to accept the unconditional return of any Cuban found excludable under U.S. law,” which underscores diplomatic intransigence).

<sup>5</sup> See Johana Tablada, *Cuba Tried to Improve Its Relations with the U.S. by Cooperating with Deportation Flights. It Didn't Work.*, Politico (June 2, 2025), <https://www.politico.com/news/2025/06/02/cuba-us-relations-deportation-flights-johana-tablada-00381355> (reporting Cuban official's statement that bilateral relations “are now ‘at zero’”); Reuters, *Trump Administration Yet to Talk to Cuba over Migration, Foreign Vice Minister Says* (Mar. 12, 2025), <https://www.reuters.com/world/americas/trump-administration-yet-talk-cuba-over-migration-foreign-vice-minister-says-2025-03-12/> (noting Cuba has received no new U.S. request for repatriation talks and that mass removals were “not contemplated” by prior agreements).

reject or fail to issue travel documents for Mariel-era individuals, and the United States has not secured any new agreements that would make removals to Cuba more likely.<sup>6</sup> The worsening bilateral relationship, combined with Cuba's ongoing refusal to accept certain nationals, including Mariel entrants, means there is no foreseeable prospect that Cuba would accept Mr. Delgado now or in the reasonably foreseeable future. Mr. Delgado additionally fears return to Cuba because he was a political prisoner there, imprisoned for participating in protests against the Cuban regime.

33. Accordingly, the factual basis underlying Mr. Delgado's original release under an Order of Supervision has not changed. If anything, the current geopolitical circumstances make removal even less likely than at the time his Order of Supervision was issued. Cuba's steadfast refusal to repatriate Mariel Cubans renders removal in the reasonably foreseeable future effectively impossible.

34. In addition, on information and belief, Mr. Delgado did not receive a meaningful interview regarding ICE's decision to revoke his OSUP, nor was he given the opportunity to submit any evidence showing that his removal is not reasonably foreseeable or that he had not violated his order of supervision. Respondents detained Mr. Delgado, despite their decades-long inability to remove him to Cuba, providing nothing more than vague assurances that removal is reasonably foreseeable and no official documentation from Cuba confirming acceptance. ICE identifies no new agreement, policy shift, or documented acceptance by Cuban authorities that would materially alter this geopolitical landscape of the United States government's barriers in returning Mariel-era Cuban nationals. On information and belief, ICE has not provided notification of a third country willing to accept him or identified a violation of his OSUP.

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<sup>6</sup> See *supra* note 3.

Nonetheless, ICE attempted and failed a third-country removal of Petitioner to Mexico. Thus, his detention is arbitrary and unlawful.

35. Moreover, Respondents' actions contravene the *Accardi* doctrine, which requires agencies to follow their own binding regulations. *Accardi*, 347 U.S. at 268. ICE may release a noncitizen from detention after the removal period, subject to certain conditions, on an OSUP. 8 U.S.C. § 1231(a)(1)(A). The Department of Homeland Security ("DHS") has promulgated two generally applicable regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 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. A third regulation, 8 C.F.R. § 212.12, governs the parole, revocation of parole or detention of a Mariel Cuban pending his or her attempted removal from the United States. Critically, by disregarding the mandatory referral of Mariel Cubans under 8 C.F.R. §§ 241.4(b)(2) and 212.12 to "Cuban Review Panels," Mr. Delgado's detention is fatally defective and therefore unlawful.

36. Various district court cases throughout the country have found that individuals like Petitioner are entitled to release and have held that the procedures employed by Respondents to detain them violate their Fifth Amendment right to due process and applicable federal regulations. Several of these cases are referenced and discussed *infra*. See *Ochoa Banega v. Warden of Soft Side South*, No. 2:25-cv-1152-JES-DNF (M.D. Fla. Jan. 29, 2026); *Perez v. Warden*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026) (noting that § 212.12, not § 241.4, applies to Mariel Cubans in immigration custody); *Beltran v. Ripa*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026); *Grigorian v. Bondi*, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025); *K.E.O. v. Woosley*,

2025 WL 2553394 (W.D. Ky. Sept. 4, 2025); *Zhu v. Genalo*, No. 1:25-cv-6523-JLR, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Phan v. Noem*, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025); *Villanueva v. Tate*, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017).

37. A recent district court decision in the Middle District of Florida explains the requirements of the Mariel Cuban OSUP regulations and their importance in a recent habeas case:

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.

*Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026). The combination of procedural violation and impracticality of removal makes Petitioner’s detention untethered to any statutory or regulatory anchor. In sum, revocation of Petitioner’s OSUP under the wrong regulatory framework, without review, and in a context where removal to Cuba that is effectively not feasible, violates both § 212.12 and the Fifth Amendment.

- b. The presumptively reasonable period for Mr. Delgado’s removal expired in May 1999, because the six-month period runs from the date his removal order became final

38. Furthermore, Mr. Delgado’s presumptively reasonable period for removal expired on May 24, 1999—six months after his removal order became administratively final. The reasoning in *Zadvydas* supports the conclusion that the six-month timeframe is measured from the date a removal order becomes final—not from the moment a noncitizen is detained or re-detained.

533 U.S. at 680. The court clearly anchors its six-month window within the framework of the statutory 90-day removal period:

[W]hile an argument can be made for confining any presumption to 90 days, we doubt that when Congress shortened the removal period to 90 days in 1996 it believed that all reasonably foreseeable removals could be accomplished in that time. We do however have reason to believe that Congress previously doubted the constitutionality of detention for more than six months.

*Id.*; see also *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002) (“The presumptively reasonable six-month period for detention pending removal ... commences at the *beginning* of the removal period.”) (emphasis added). By directly referencing Congress’ modification of the 90-day statutory removal period, the *Zadvydas* court signaled that the six-month presumption functions as an extension of that framework and not as an open-ended window that restarts upon each new detention. 533 U.S. at 680; See also *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002) (on remand from the Supreme Court, noting that *Zadvydas*’ detention lasted “more than six months” after “the expiration of the removal period”) (emphasis added).

39. Moreover, *Zadvydas* considered the cases of noncitizens who remained in custody through the expiration of the statutory removal period, 533 U.S. at 684-86, not the unique (and present) situation of a noncitizen released from custody for decades who is later re-detained. Thus, the six-month period the court pronounced contemplates an uninterrupted period of detention following the entry of a removal order. See *id.* at 701. Indeed, when the Fifth Circuit considered *Zadvydas* on remand from the Supreme Court, it opined on the question of subsequent detentions and declined to extend a similar six-month presumption of reasonableness to future detentions. *Zadvydas*, 285 F.3d at 404. Instead, it determined that Mr. *Zadvydas*’ re-detention could occur only “upon a showing that” “matters transpiring after the decision of the Supreme Court” resulted in a “substantial likelihood of removal in the reasonably foreseeable future[.]” *Id.*

40. The Southern District of Florida recently rejected the Government's position:

In this case, the Government has had over thirteen years to make such arrangements for Petitioner's removal. Petitioner's period of detention did not restart on December 3, 2025: it has been running since December 17, 2013. Most of these arrangements could have "likely be[en] pursued even while the noncitizen [was] on release." The Government may not sit on its hands for thirteen years before deciding to implement an order of removal and then hold the non-resident in detention while it figures out how to effectuate removal. Such conduct runs afoul of the very danger outlined in *Zadvydas*.

*Pierre v. Field Office Director*, No. 0:25-cv-62475-WPD (S.D. Fla. Jan. 29, 2026) (internal citations omitted).<sup>7</sup> Accordingly, ICE cannot restart that clock by releasing and re-detaining Petitioner at will, nor may it rely on the wrong regulatory authority to justify such detention.

41. Multiple other courts have similarly held that the presumptively reasonable period of detention runs immediately following the statutory removal period. *See, e.g., Boza v. Modrant*, 2026 WL 617412 (M.D. Fla. Mar. 5, 2026) ("[Respondents] assume the reasonable period of detention resets each time a noncitizen is detained. That assumption is inconsistent with *Zadvydas*."); *Tadros v. Noem*, 25-CV-4108, 2025 WL 1678501, \*1 (D.N.J. Jun. 13, 2025); *Morales v. Warden*, 2026 WL 617386 (M.D. Fla. Mar. 5, 2026); *Mahdejian v. Bradford*, 9:25-CV-00191-MJT (E.D. Tex. Oct. 23, 2025). In *Tadros v. Noem*, the court considered the case of a noncitizen with a 2009 deferred removal order to Egypt. Two days after the removal period began,

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<sup>7</sup> Courts have found that when a non-citizen "was previously detained, then released on supervised release . . . his 90-day removal period has long expired." *See Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at \*2 (E.D. Tex. Oct. 9, 2025). That is, Courts have "broadly agree that 'the six-month period [under *Zadvydas*] does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again.'" *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at \*7 n.6 (W.D.La. Oct. 15, 2019) (quoting *Sied v. Nielsen*, 17-CV-06785-LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018)), *report and recommendation adopted*, No. 1:19-CV-670-P, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *accord Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at \*9 (S.D. Tex. Sept. 26, 2025) ("The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself."); *accord Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025) (finding that "re-detention after release on an Order of Supervision 'is not your typical first round detainment of an alien awaiting removal'"); *see also Solis Nolasco v. Noem*, No. CV GLR-25-3847, 2026 WL 25002, at \*4 (D. Md. Jan. 5, 2026). Likewise, the Eleventh Circuit speaks in terms of a "removal period," not "periods," immediately following the finality of the order of removal. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

DHS released Tadros from custody. 2025 WL 1678501 at \*1. Fifteen years later, DHS re-detained him, asserting that his removal had become reasonably foreseeable due to “efforts to facilitate [his] removal to a country other than Egypt[.]” *Id.* at \*2. Tadros argued that the six-month presumptive period ran immediately following his 2009 removal order and thus had long since expired. *Id.* at \*3. Despite only having spent 37 days in detention, the court held: “Tadros has the better argument under *Zadvydas*.”

42. As the Supreme Court held in *Clark v. Martinez*, 543 U.S. 371 (2005), even noncitizens subject to final removal orders cannot be detained indefinitely when removal is not reasonably foreseeable. There, the Court recognized that the government had “conceded it was no longer involved in repatriation negotiations” with Cuba, demonstrating that the impossibility of removal ends statutory authority for continued detention. *Id.* at 386. It is unreasonable to allow the Government to rearrest a noncitizen on an OSUP and repeatedly restart the six-month detention period at its discretion. Such an interpretation would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months.

43. Here, Mr. Delgado has spent 119 days and counting in detention, but his removal period expired nearly thirty years ago, in 1999, six months after his removal order became final. On information and belief, prior to his release under the OSUP, Mr. Delgado was already held in detention by immigration officials for approximately eighteen (18) months between around 2000 and 2002.

44. First, his interest in freedom from detention “lies at the heart of the liberty” the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Second, the risk of erroneous deprivation of that interest is substantial here. A DHS officer found Mr. Delgado eligible for supervised release after he was ordered removed and served his underlying criminal sentence. Since then, Mr.

Delgado has complied with all the yearly reporting requirements of supervision, and he proved he is not a flight risk by reporting to ICE as required. There is no indication ICE considered these facts when revoking release. What is more, ICE did not follow the correct regulations. Third, the government has not established any legitimate interest in Mr. Delgado's continued detention. The purposes of the OSUP have not been served and it is not appropriate to enforce his order of removal because removal is not reasonably foreseeable to Cuba for a Mariel Cuban like Petitioner due to longstanding repatriation barriers that ICE has not demonstrated otherwise. Therefore, the burden is on Respondents to show that his continued detention is justified. *Zadvydas*, 533 U.S. at 680 (upon the expiration of the presumptively reasonable removal period, the burden shifts to the government to justify further detention).

45. The Government has not established any legitimate interest in Petitioner's continued detention. The Government considered his circumstances and determined that he should be released under an OSUP. Petitioner has since complied with the terms of his OSUP. Therefore, Petitioner's detention serves no valid statutory purpose. *See Beltran v. Ripa*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026); *Perez v. Warden*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026); *Ochoa Banega v. Warden of Soft Side South*, No. 2:25-cv-1152-JES-DNF (M.D. Fla. Jan. 29, 2026).

c. Respondents have no authority under federal law to detain Mr. Delgado at Alligator Alcatraz

46. Finally, Respondents have detained Mr. Delgado at Alligator Alcatraz without legal authority to do so. Federal law does not allow DHS to delegate detention authority to entities outside of any process or framework devised or even contemplated by Congress. *See infra*. The state agencies that operate the facility have no authority under federal law to detain non-citizens pending removal. Federal law places that responsibility with DHS. And unlike every other

immigration detention facility in the country prior to this one, DHS has not signed any contract or Intergovernmental Services Agreement (IGSA) for Alligator Alcatraz. Thus, if Mr. Delgado is not released outright, he must at minimum be released from this facility.

47. Release from Alligator Alcatraz is critical given the alarming conditions present there. Amnesty International has documented a number of egregious conditions at Alligator Alcatraz, including widespread shackling and limited access to medical care, among many other violations of human rights. These are the conditions Mr. Delgado is experiencing:

Amnesty International's research concludes that people arbitrarily detained in 'Alligator Alcatraz' are being held in inhuman and unsanitary conditions including overflowing toilets with fecal matter seeping into where people are sleeping, limited access to showers, exposure to insects without protective measures, lights on 24 hours a day, poor quality food and water, and lack of privacy. People interviewed shared that access to medical care is inconsistent, inadequate, or denied altogether, placing individuals at serious risk of both physical and mental harm. People reported being always shackled when they were outside their cage. Other treatment people have endured amounts to torture, including being put in the 'box', described as a 2x2 foot cage-like structure people are put in as punishment – sometimes for hours at a time exposed to the elements with hardly any water – with their feet attached to restraints on the ground.

*Amnesty Int'l, USA: Torture and Enforced Disappearances in the Sunshine State, supra* note 1.

#### STATEMENT OF LAW

48. The Due Process Clause of the Fifth Amendment states that “[n]o person shall be ... deprived 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—lie at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. This applies to everyone in this country, including aliens. *Id.* at 693 (“[T]he Due Process clause applies to all ‘persons’ within the United States, including aliens, whether their presence

here is lawful [or] unlawful ...."); *Reno v. Florida*, 507 U.S. 292, 306 (1993) (“the Fifth Amendment entitles aliens to due process of law in deportation proceedings”).

49. Pursuant to 8 C.F.R. § 212.12(a), Mr. Delgado’s continued detention is governed by the procedures set forth in that section for Mariel Cubans (defined as Cubans “who last came to the United States between April 15, 1980, and October 20, 1980”) who are detained “pending his or her return to Cuba or to another country.” 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 or continue detention. § 212.12(d)-(h).

50. While § 212.12 vests discretion in Cuban Review Panels to review parole decisions, that discretion is not unlimited. It requires that decisions to continue detention be accompanied by a brief statement of reasons and that detainees be provided a copy of the decision translated into Spanish. § 212.12(b)(1). Additionally, the regulation establishes review procedures through the Cuban Review Plan including either record review or personal interview, consideration of relevant factors such as risk of violence, ties to the United States, likelihood of complying with parole conditions, and issuance of written recommendations. § 212.12(d), Upon information, knowledge, and belief, Respondents have not complied with any of these regulatory requirements.

51. What is more, Respondents have also failed to provide Mr. Delgado with notice of the reasons for his continued detention or revocation of his OSUP as required by 8 C.F.R. § 241.4(l) or § 241.13. Petitioner has no copy in his possession of any notice concerning his OSUP or the revocation of his OSUP. Respondents have also not afforded Mr. Delgado a meaningful opportunity to respond to these reasons. Arbitrary or unexplained revocation 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).

52. As a Mariel entrant, Mr. Delgado belongs to a class of Cuban nationals whose removal has historically been severely restricted due to Cuba's longstanding and continuing refusal to accept the return of many individuals who arrived during the 1980 Mariel boatlift. The United States has repeatedly acknowledged that Cuba will not issue travel documents for many Mariel Cubans, including individuals in situations identical to Mr. Delgado's. On information and belief, Respondents have not identified a third country that is both willing to accept Mr. Delgado and to which his removal would not violate the Immigration and Nationality Act. *See* 8 U.S.C. § 1231(b)(3) (prohibiting removal to a country where a noncitizen's life or freedom would be threatened). Therefore, his removal is not reasonably foreseeable.

53. Detaining Mariel Cubans, like Mr. Delgado, at an ICE check-in, without prior notice, without identifying any parole or supervision violation, and without providing an opportunity to contest the revocation, constitutes the very sort of arbitrary governmental action that violates due process. Courts repeatedly hold that custody cannot be re-imposed without procedural safeguards, especially where the person has complied with all conditions and is living in the community. *See 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). Thus, revoking an Order of Supervision with no violation, no notice, and no hearing is a clear violation of the Fifth Amendment.

54. ICE's actions violate the *Accardi* doctrine, which requires agencies to follow their own binding regulations. *See Accardi*, 347 U.S. at 268. *Accardi* prohibits the Respondents from disregarding mandatory procedures governing OSUP revocations.

55. The regulations governing the custody and review of Mariel Cubans, 8 C.F.R. § 212.12, and the general OSUP revocation procedures, 8 C.F.R. §§ 241.4(l), 241.13, create enforceable rules that Respondents must follow before re-initiating detention, or attempting removal. Respondents have ignored these rules entirely.

56. None of the conditions are met for OSUP revocation in Mr. Delgado's case such that Respondents cannot legally detain him at this juncture. Detaining a Mariel Cuban at a check-in with no reason provided is directly contrary to the government's own binding regulations. Respondents' failure to comply with these mandatory procedures renders its actions arbitrary, capricious, and unlawful.

57. As the District Court for the Southern District of Florida explained in *Grigorian v. U.S. Atty. Gen.*, regarding the revocation of an Order of Supervision and the requirement for a meaningful informal interview, "[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. This compels Petitioner's release." No. 1:25-cv-22914 \*18-19 (S.D. Fla. Sept. 9, 2025).

58. The *Grigorian* court continued to explain its power to ensure that such discretion is exercised in accordance with regulations and constitutional due process requirements:

To be clear, the Court is not 'reviewing and reversing the manner in which discretion was exercised.' *Accardi*, 347 U.S. at 268. As the Court has already explained, the Government may revoke Petitioner's OSUP for any of the reasons stated in § 241.4(l)(2). But they may not detain him without offering a meaningful opportunity to contest those reasons. After all, 'if men must turn square corners

when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.' *Niz-Chavez*, 593 U.S. at 172. The Court therefore finds that Petitioner must be released from custody. *Id.* at \*20.

59. Numerous courts throughout the nation have reached similar conclusions. *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); *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).

60. Here, Mr. Delgado's final order of removal to Cuba has remained unexecuted for decades, and no immigration judge has ever designated a third country of removal. Mr. Delgado is a part of a group of Cuban nationals whom Cuba has historically refused to accept, and DHS has offered no evidence that this long-standing barrier has changed. ICE and DHS have failed to provide Petitioner or his counsel with any advance notice of a third country of removal and have failed to provide Petitioner with the requisite due process to ensure he is not tortured in any third country that he may be potentially removed to.

61. The revocation of Mr. Delgado's OSUP and ongoing detention are a stark violation of constitutional protections under the Fifth Amendment and Mr. Delgado's rights to due process. Mr. Delgado 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.<sup>8</sup> Therefore, ICE's failure to provide the required procedures violates the *Accardi* doctrine. *Grigorian* 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.

62. Analogous to *Grigorian*, Respondents' actions do not adhere to ICE's own regulations and fall short of the fundamental requirements of due process. Due process under the Fifth Amendment requires reasonable notice and an opportunity to be heard. The right to be heard before being condemned to suffer grievous loss of any kind is a principle basic to society. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Mr. Delgado has been in the United States for over forty-five (45) years. To now detain Mr. Delgado with no notice or explanation and attempt to deport him to an unknown and unidentified third country where it has not been determined that Mr. Delgado will be safe is arbitrary, unlawful, and a violation of Mr. Delgado's constitutional rights.

63. Lastly, DHS may detain individuals only pursuant to valid statutory or regulatory authority. Detention without such authority is ultra vires and unlawful. *See Youngberg v. Romeo*, 457 U.S. 307, 316-17 (1982) (holding that when the state confines an individual, it must do so pursuant to lawful authority and provide constitutionally adequate protections for personal liberty and safety). And states cannot participate in immigration enforcement absent permission from Congress. *Arizona v. United States*, 567 U.S. 387, 408 (2012).

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<sup>8</sup> The Supreme Court's recent decision in *Dep't of Homeland Sec. v. D.V.D.*, 602 U.S. (2025) (granting stay) does not preclude individual petitions for habeas; it merely precludes the universal injunction on the matter.

64. Federal law is emphatic that DHS itself—either through its employees or contractors—must be the one to detain non-citizens pending removal proceedings or removal. Every statute that provides authority for long-term immigration detention gives that authority to DHS alone. *See* 8 U.S.C. §§ 1225(b)(2)(A), 1226(a), (c), 1231(a)(2)(A) (requiring the “Secretary” or “Attorney General” to carry out all detention).

65. Upon information, knowledge, and belief, the authority Respondents have elsewhere cited for detention at Alligator Alcatraz is 8 U.S.C. §1357(g). Section 1357(g) allows DHS to delegate a limited number of “immigration officer functions” to individual state and local officers who complete training and certification and receive federal supervision, and are also known as “287(g) agreements” under the Immigration and Nationality Act and federal regulations. 8 U.S.C. § 1357(g)(1)-(5); 8 C.F.R. § 287.1.

66. But § 1357(g) has never been used before as the authority to operate a detention facility. Nor can it be used in this way.

67. Section 1357(g) does not provide authority for Mr. Delgado’s detention at this facility for at least two reasons.

68. *First*, the statute does not allow local police officers to be assigned authority to conduct large-scale and long-term detention operations. It only allows them to be delegated “a function of an immigration officer.” 8 U.S.C. § 1357(g)(1). The broader § 1357 statute provides these “[p]owers of immigration officers.” *Id.* § 1357 (title); *see El Cenizo v. Texas*, 890 F.3d 164, 177 (5th Cir. 2018). And none of the statute’s immigration-officer functions include detention during removal proceedings. Rather, the functions of individual immigration officers are policing activities, like interrogations and arrests of individual noncitizens. *See* 8 U.S.C. § 1357(a)(1) (interrogation), (a)(2)-(5) (arrests), (c) (search), (f) (taking fingerprints).

69. In other words, nothing in § 1357 or any other statute lists detention operations as an “immigration officer function” that could be delegated to state officials under § 1357(g). Because immigration detention is a complex and multifaceted undertaking, the INA assigns detention operations to DHS as an agency. For instance, it provides that “*the Attorney General*”<sup>9</sup> may detain noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added); *see id.* § 1225(b)(2)(A) (similar); *id.* § 1231(a)(2)(A) (similar). Indeed, *every* statute that mentions the authority to manage detention operations assigns that power to DHS as an agency, not to individual immigration officers. *See* 8 U.S.C. §§ 1103(a)(10), 1231(g).

70. Nevertheless, ICE Deputy Executive Associate Director Thomas Giles has stated in a sworn declaration in *Friends of the Everglades, Inc. v. Noem*, 1:25-cv-22896 (S.D. Fla July 2, 2025) (D.E. 21-1):

ICE is not providing any funding for the construction of the TNT Detention Facility [Alligator Alcatraz]. The State of Florida is responsible for the funding and construction of the facility. ICE’s role concerning the development of the TNT Detention Facility has been limited to touring the facility to ensure compliance with ICE detention standards, and meeting with officials from the State of Florida to discuss operational matters.

71. Giles further stated:

The ultimate decision of who to detain at the TNT Detention Facility belongs to Florida.... If Florida decides to detain any illegal aliens at the TNT Detention Facility, they would do so under the authority delegated pursuant to section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g). Many Florida entities have entered 287(g) agreements since President Trump took office, including the Florida National Guard and several Florida law enforcement entities. Those agreements, including the date they were signed, are available on ICE’s website ... The agreements

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<sup>9</sup> References to the Attorney General in 8 U.S.C. § 1226(a) confer authority to the Department of Homeland Security (“DHS”) as well as the Department of Justice (“DOJ”), with enforcement actions specifically transferred to DHS. 8 U.S.C. § 1103(a)(1).

generally authorize those entities to detain aliens under the immigration laws. ICE's understanding is that Florida intends to operate its 287(g) facilities under those existing agreements.

*Id.*

72. Section 1357's implementing regulations confirm that detention during removal proceedings is not an "immigration officer function" that could be delegated under § 1357(g). Those regulations list the powers of "immigration officers." 8 C.F.R. § 287.5 (title), 287.8. And *none* of them include immigration detention operations. *See, e.g.*, 8 C.F.R. § 287.5(a) (interrogation), (c), (e) (arrest), (d) (search). The only detention-related activities they include are policing activities like the other immigration-officer functions: the authority to "take and maintain custody of and transport any person who has been arrested by an immigration officer," 8 C.F.R. § 287.5(c), and the authority to "briefly detain [a] person for questioning," *id.* § 287.8(b)(2).

73. This is why, prior to Alligator Alcatraz, no detention facility ever claimed to operate under state control pursuant to § 1357(g). The statute does not authorize this detention, so Mr. Delgado must be released from the facility.

74. *Second*, even if § 1357(g) did authorize state officers to conduct long-term immigration detention, their detention is being managed and conducted by individuals who have not been deputized under any 287(g) agreement. Upon information, knowledge, and belief, Alligator Alcatraz is run by the Florida Department of Emergency Management (FDEM), which has no 287(g) agreement, and therefore none of its employees are deputized to exercise any immigration officer functions. Furthermore, the facility is almost entirely staffed by *private contractors*, who are not and cannot be deputized under § 1357(g). The statute only allows authority to be conveyed to "an officer or employee of [a] State or subdivision," 8 U.S.C. § 1357(g)(1), not a private contractor.

75. Because they are not and cannot be deputized, these FDEM officials and private contractors have satisfied *none* of the statute's requirements. They have not "received adequate training" in the complexities of immigration law and procedures. *See* 8 U.S.C. § 1357(g)(2). They have no "written agreement" which lays out the extent and limits of their immigration authority. 8 U.S.C. § 1357(g)(1), (5). And they have no assigned federal official "who is required to supervise and direct" their immigration activities. 8 U.S.C. § 1357(g)(5). These non-deputized individuals cannot exercise 287(g) authority outside the "highly regulated scheme for adopting 287(g) agreements." *El Cenizo*, 890 F.3d at 177; *see Creedle v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1276, 1302 (S.D. Fla. 2018) (explaining that training and federal supervision are necessary to help deputized officers navigate "the significant complexities involved in enforcing federal immigration law") (quotation marks omitted).

76. In the *Friends of the Everglades* case, Respondents conspicuously declined to identify any particular state officer who was purportedly deputized under § 1357(g) to detain people at Alligator Alcatraz. *Friends of the Everglades, Inc. v. Noem*, No. 1:25-cv-22896 (S.D. Fla. July 2, 2025). They simply cited various agencies' 287(g) agreements. *Id.* But the agreements themselves do not convey any authority to anyone. *See Santos v. Frederick Cnty.*, 725 F.3d 451, 457, 465 (4th Cir. 2013). They simply provide the framework for individual state officers to be deputized. Yet Defendants have stayed silent on which state officers at Alligator Alcatraz—if any—have actually been deputized. That underscores what Florida has since admitted: The people who are actually managing and conducting detention operations are FDEM officials and private contractors who do not and cannot have any authority under Section 1357(g). This provides an independent reason to order Mr. Delgado released from the facility.

77. Prior to Alligator Alcatraz, facilities operated by state government contractors did so pursuant to Intergovernmental Services Agreements (IGSAs). 8 U.S.C. § 1103(a)(10) (authorizing payments to IGSA facilities including “States and political subdivisions of States”). The IGSA framework provided for ICE’s operational control over the detention of aliens in non-federal facilities and is premised on compliance with federal standards.<sup>10</sup>

78. ICE may only house aliens in state or local government facilities if it has either entered into a valid IGSA under Memorandum of Agreement (“MOA”) guidance or procured detention space from the Law Enforcement Agency (“LEA”) using ICE funding, oversight, and contractual authority. Specifically, ICE’s February 7, 2025 MOA further clarifies that detention by a local entity requires a formal Inter-Governmental Service Agreement:

If ICE determines that it is necessary, the LEA shall, to the extent it operates a detention facility or facilities meeting the standards described herein, enter into an Inter-Governmental Service Agreement (IGSA) with ICE, pursuant to which the LEA shall provide, for a fee, detention of incarcerated aliens in LEA facilities, upon the completion of their sentences.<sup>11</sup>

79. No IGSA exists between ICE and Florida authorizing the detention of Mr. Delgado at Alligator Alcatraz. Respondents are detaining Mr. Delgado at a facility over which ICE has no operational control and without any statutory, regulatory, or contractual authorization.

80. Instead, Mr. Delgado is confined in a facility that is entirely operated by state officers and private contractors, and has no IGSA. Alligator Alcatraz has skirted the system devised by Congress and is being run outside federal control without an IGSA, illegally circumventing federal acquisition regulations governing procurement, competitive bidding, and

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<sup>10</sup> ICE, *Intergovernmental Service Agreements Guidance* (Feb. 7, 2025). Last retrieved on Dec. 27, 2025. Available at: <https://www.ice.gov/doclib/foia/igsas.pdf>

<sup>11</sup> See Memorandum of Agreement (Feb. 7, 2025). Last retrieved on Dec. 27, 2025. Available at: <https://www.ice.gov/doclib/foia/igsas.pdf>.

federal compliance and monitoring of the contractor's obligations and deliverables. *See generally* 48 CFR § 1.101 (Federal Acquisition Regulation). Because it lacks an IGSA, unlike every other facility, Alligator Alcatraz has no contractual obligation to follow a particular set of ICE Detention Standards, and it lacks the contractual oversight mechanisms that come with an IGSA arrangement. As a result, Mr. Delgado and other detainees have faced a range of anomalous and alarming conditions at the facility.

81. Without a valid IGSA or other statutory or contractual authority, DHS lacks the legal power to detain Mr. Delgado in facilities operated by an agency of the State of Florida. Detention under these circumstances is *ultra vires*, arbitrary, and violates his constitutional and statutory rights. *See Accardi*, 347 U.S. at 268; *Zadvydas*, 533 U.S. at 699-700; *Youngberg*, 457 U.S. at 316-17.

82. As a result of this illegally constituted detention center, Mr. Delgado faces numerous forms of irreparable harm from being illegally detained at Alligator Alcatraz. Unlawful detention is a paradigmatic form of irreparable harm. *See United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) (holding that “unnecessary deprivation of liberty clearly constitutes irreparable harm”). His irreparable injury is “neither remote nor speculative, but actual and imminent.” *Siegel v. LePore*, 234 F.3d 1163, 1176-77 (11th Cir. 2000).

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT Substantive Due Process**

83. The Supreme Court has found that the “Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 682.

84. Mr. Delgado, a Mariel Cuban who has resided in the United States for more than four decades, was seized at a routine ICE check-in despite having been fully compliant with reporting requirements. On information and belief, ICE provided no compliant notice to justify the revocation of his OSUP. Such unexamined and indefinite detention bears no reasonable relation to ensuring appearance at removal proceedings or protecting public safety.

85. Immigration detention must “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore*, 538 U.S. at 527. Arbitrarily cancelling Mr. Delgado’s supervision and re-detaining him, bears no reasonable relation to public safety, to ensuring attendance at proceedings, or to any regulatory goal. Such unexplained and sudden re-detention transforms a civil regulatory scheme into punitive confinement, which the Fifth Amendment forbids. *Zadvydas*, 533 U.S. at 690.

86. By categorically denying Mr. Delgado the opportunity for meaningful individualized review, Respondents have transformed a civil regulatory scheme into punitive confinement in violation of substantive due process. The Fifth Amendment forbids detention that is arbitrary, excessive in relation to its purpose, or unsupported by individualized justification. *See Zadvydas*, 533 U.S. at 690. Because ICE failed to follow mandatory parole-revocation standards in 8 C.F.R. § 212.12(h), Mr. Delgado’s detention violates his due process rights.

**COUNT II**  
**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**  
**Procedural Due Process**

87. 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.

88. Mr. Delgado received neither. ICE revoked his OSUP and detained him at routine ICE check-in without alleging any violation, without providing a compliant written explanation, and without affording him a meaningful opportunity to contest the revocation. This constitutes a denial of the most basic procedural protections required by the Fifth Amendment and described in *Mathews*.

89. ICE failed to comply with the mandatory grounds for revocation set forth in 8 C.F.R. §§ 241.4 and 212.12. None of these grounds applied to Mr. Delgado, who was fully compliant with the reporting requirements of the OSUP. If none of these circumstances exist, ICE has no legal authority under the regulation to revoke parole or supervision. 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.

90. Respondents deprived Mr. Delgado 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.

**COUNT III**  
**VIOLATION OF THE ACCARDI DOCTRINE AND 8 C.F.R. §§ 212.12, 241.4, 241.13**  
**No Regulatory Authority to Detain**

91. Under the *Accardi* doctrine, agencies must follow their own binding regulations, particularly when those regulations protect individual liberty interests. *Accardi*, 347 U.S. at 268.

92. 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.

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

94. Respondents disregarded the requirements of §§ 212.12, 241.4, and 241.13. On information and belief, they failed to provide Mr. Delgado with a compliant written explanation and to follow the required procedure for cancelling his supervision and taking him into custody and continuing to detain him. 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). The purposes of the OSUP have not been served and it is not appropriate to enforce an order of removal because removal is not reasonably foreseeable to Cuba for a Mariel Cuban like Petitioner due to longstanding repatriation barriers that ICE has not demonstrated otherwise. ICE has no legal authority under the regulation to revoke parole or supervision under these stated grounds. 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.

95. Respondents deprived Mr. Delgado 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 when re-initiating detention or attempting removal.

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

**COUNT IV**  
**VIOLATION OF SECTION 1357(g)**  
**No Authority to Detain**

97. Respondents may only detain individuals pursuant to a valid statutory or contractual basis. Detaining individuals without such authority is ultra vires and violates Mr. Delgado's constitutional and statutory rights.

98. As explained above, there is no authority under federal law for state officers to independently detain Mr. Delgado at Alligator Alcatraz.

99. Section 1357(g) provides no authority for state officers to independently detain immigrants during removal proceedings.

100. And even if it did, the facility is managed and staffed by state officials and private contractors who are not and cannot be deputized under § 1357(g), and who have not completed any of the statute's training, certification, or supervision requirements.

101. Mr. Delgado's detention at this facility therefore violates federal law for at least two independent reasons.

**COUNT IV**  
**VIOLATION OF 8 U.S.C. § 1103(a)(11)(A)**  
**No Authority to Detain**

102. Mr. Delgado's detention represents an illegal and unaccountable delegation of detention authority outside the constraints of 8 U.S.C. § 1103(a)(11)(A), which provides for formal contracts allowing federal and state or local governments to provide for the care and housing of detained immigrants pending removal proceedings or removal efforts. These contracts are known as Inter-Governmental Services Agreements (IGSAs.)

103. Other than IGSAs, Congress has not enacted any alternate framework for the federal government to coordinate with States to provide for the detention of immigrants pending their removal proceedings or pending efforts to execute removal orders.

104. Since no IGSA exists governing Alligator Alcatraz, Mr. Delgado's months-long detention at this facility is *ultra vires* and unlawful.

105. Respondents have skirted the statutory process in § 1103(a)(11) by delegating operational control to an agency of the State of Florida without an IGSA, illegally circumventing federal regulations governing procurement, competitive bidding for government contracts, and federal oversight and compliance. *See generally* 48 C.F.R. § 1.101 (Federal Acquisition Regulation).

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully request 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 detention 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 18, 2026

Respectfully submitted,

/s/ Stephen F. Rosenthal

/s/ Christina H. Martinez

Stephen F. Rosenthal

Fla. Bar No. 0131458

Christina H. Martinez

Fla. Bar No. 1029432

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**  
**PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner 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.

/s/ Christina H. Martinez

Christina H. Martinez

Fla. Bar No. 1029432

Dated: March 18, 2026