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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

YAIROVIS SANTACRUZ MACIAS,
***Petitioner*,**

v.

JUAN BALTAZAR,
in his official capacity as Warden of the Aurora Contract Detentoin Facility owned and operated by GEO Group, Inc.;

GEORGE VALDEZ,
in his official capacity as Field Office Director, Denver, U.S. Immigration & Customs Enforcement;

KRISTI NOEM
in her official capacity as Secretary, U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of Immigration & Customs Enforcement (ICE);

PAM BONDI,
in his official capacity as Attorney General, U.S. Department of Justice.

Respondents.

Case No. 26-cv-01046

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. The issue before this Court is not complicated. Respondents illegally incarcerate Petitioner, Yairovis Santacruz Macias ("Mr. Santacruz"), at the Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility").[1] Respondents' authority under 8 U.S.C. § 1231 to jail him expired 180 days after the Immigration Judge's ("IJ") order to remove Mr. Santacruz to Cuba became final on August 25, 2020. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (finding the government's authority under 8 U.S.C. § 1231 limited to six months unless the Government shows a significant likelihood of removal in the reasonably foreseeable future). In other words, ICE's authority to jail Mr. Santacruz pursuant to its authority in 8 U.S.C. § 1231 expired 2025 days ago. Nevertheless, Immigration and Customs Enforcement ("ICE") jailed Mr. Santacruz pursuant to § 1231 on January 7, 2026, when he duly reported to an ICE check-in.

2. There is no significant likelihood that Respondents will remove Mr. Santacruz in the reasonably foreseeable future. In fact, ICE agreed when it released Mr. Santacruz on an Order of Supervision ("OSUP") approximately five years ago. ICE has not taken any significant steps to secure Mr. Santacruz's removal since it jailed him without notice or

[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement"). Indeed, the conditions in the Aurora Facility are "abhorrent." *Arosteguí-Maldonado v. Baltazar*, 794 F.supp.3d 926, 940 (D. Colo. 2025).

cause when he reported to an in-person ICE appointment. This Court must therefore order Mr. Santacruz's immediate release.

PARTIES

3. Mr. Santacruz was at liberty in the United States for over five years until ICE rejailed him without notice or an opportunity to be heard regarding whether his incarceration was necessary. Now, 2026 days since his removal order became final, ICE keeps Mr. Santacruz incarcerated at the Aurora Facility without the statutory authority to do so and in violation of his constitutionally protected liberty interest. If released, Mr. Santacruz will return to live with his U.S. citizen wife and U.S. citizen children in Colorado [redacted] Mr. Santacruz has no claim to citizenship in any country other than Cuba.

4. Respondent George Valdez is sued in his official capacity as Field Office Director of ICE Detention and Removal Operations for the Denver District. He has jurisdiction over the Area of Responsibility in which Mr. Santacruz is jailed, is authorized to release Mr. Santacruz, and is a legal custodian of Mr. Santacruz.

5. Respondent Todd Lyons is sued in his official capacity as the Acting Director for ICE. He is responsible for the enforcement of the immigration laws and is a legal custodian of Mr. Santacruz.

6. Respondent Kristi Noem is sued in her official capacity as the Secretary of the Department of Homeland Security ("DHS"), the arm of the U.S. government responsible for enforcing the immigration laws. Secretary Noem is a legal custodian of Mr. Santacruz because ICE is a sub-agency of DHS.

7. Respondent Pam Bondi sued in her official capacity as the Attorney General of the United States, the chief officer within the Department of Justice ("DOJ"). The DOJ encompasses the Board of Immigration Appeals ("BIA") and the IJs as sub-agencies of the Executive Office of Immigration Review ("EOIR"). Attorney General Bondi shares responsibility for the implementation and enforcement of the immigration laws.

8. Respondent Juan Baltazar is sued in his official capacity as the Warden of the Auroa Facility. He is a legal custodian while Mr. Santacruz is detained at the Aurora Facility.

CUSTODY

9. Mr. Santacruz is in ICE's physical custody. His immediate custodian is George Valdez, Field Office Director of ICE Detention and Removal Operations for the Denver District. ICE jails Mr. Santacruz at the Aurora Facility, located at 3130 N. Oakland Street in Aurora, CO. Warden Baltazar oversees the Aurora Facility's operations and is employed by GEO Group, Inc.

10. Section 1231 of 8 U.S.C. authorized ICE's incarceration of Mr. Santacruz's from August 25, 2020 until February 21, 2021. 8 U.S.C. § 1231; *Zadvydas*, 533 U.S. at 701 (holding that the statute only permits incarceration for 180 days after a final removal order unless removal is significantly likely in the reasonably foreseeable future).

11. Nevertheless, Respondent Valdez and his agents continue to jail Mr. Santacruz; he is therefore "in custody under or by color of the authority of the United States" for purposes of habeas corpus under 28 U.S.C. § 2241(c)(1).

JURISDICTION AND VENUE

12. This action arises under the Constitution of the United States, 28 U.S.C. § 2241(c)(1), (3), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

13. Under 28 U.S.C. § 1331, this Court has federal question jurisdiction over actions arising under the Constitution, laws, or treaties of the United States.

14. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether the government unlawfully imprisons people in its custody. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001) *superseded by statute*, REAL ID Act of 2005, 119 Stat. 310 (codified as amended at 8 U.S.C. § 1252(a)(5) (2005)), *as recognized in Nasrallah v. Barr*, 140 S. Ct 1683 (2020); *Boumediene v. Bush*, 128 S.Ct. 2229, 2248 (2008) (citing *St. Cyr*).

15. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201–02 (Declaratory Judgement Act). Mr. Santacruz also relies on Fed. R. Civ. P. 57 because he seeks declaratory and injunctive relief.

16. Mr. Santacruz is "in custody," and the custody is "in violation of the Constitution or laws or treaties of the United States." *Zadvydas*, 533 U.S. at 688 ("We conclude that § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention."); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.").

17. Venue properly lies in the District of Colorado. 28 U.S.C. §§ 1391(b)(2), (e); 2241. This petition is filed while Mr. Santacruz is physically present within the district because he is detained by Respondents Baltazar and Valdez at the Aurora Facility in Aurora, CO. Undersigned counsel is also in the district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. Exhaustion is not required because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus must exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required. … But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation omitted).

19. While inapplicable here, some situations require a Petitioner to exhaust administrative remedies prior to seeking a writ under § 2241. *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259 (D. Colo. 2013) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam)) *abrogated on different grounds by Nielsen v. Preap*, 139 S. Ct. 954 (2019). However, exhaustion is unnecessary if futile. *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991) (finding that exhaustion is not required due to futility where the state's highest court recently decided the precise legal issue petitioner raised in his federal habeas petition).

20. Here, exhaustion is futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1231. *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2277 (2021) (when a noncitizen "is ordered removed and the order becomes 'administratively final,' detention becomes mandatory."). An IJ lacks jurisdiction over Mr. Santacruz's custody status.

21. Instead, ICE is judge and jailer. ICE conducts its own custody reviews for detained noncitizens every 90 days after a final removal order. 8 C.F.R. §§ 241.4(d), (h), (i), (k). During those reviews, ICE must consider, *inter alia*, whether the noncitizen is a non-violent person; whether they will remain non-violent if released; whether they are likely to violate conditions of release; whether they had any disciplinary infractions or incidents while incarcerated; whether they have criminal legal contacts; whether they will adjust to life in the community; and whether they will engage in future criminal activity if released. 8 C.F.R. §§ 241.4(e),(f).

22. After his removal order became final on August 25, 2020, ICE sought to secure Mr. Santacruz's removal while he remained in ICE custody. Unable to remove him, ICE released Mr. Santacruz on an OSUP 141 days later. ICE rejailed him on January 7, 2026, without notice or an opportunity to be heard. Since being reincarcerated, ICE has not provided Mr. Santacruz with the process he is due.

23. Although no statutory exhaustion requirements apply to Mr. Santacruz's claim of unlawful incarceration, he exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. The Supreme Court agrees. *See Zadvydas*, 533 U.S. at 692 (criticizing the limited protections Respondents provide in the post-removal process as likely unconstitutional).

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

24. Mr. Santacruz is thirty-one years old and was born in Cuba. He has no ties to any country other than Cuba and the United States. Mr. Santacruz entered the United States without inspection seeking asylum in June 2020.

25. The IJ ordered Mr. Santacruz's removal to Cuba on August 25, 2020. ICE kept Mr. Santacruz in custody for approximately four and a half months and then released him on an OSUP January 13, 2021, concluding *inter alia* that his removal was not significantly likely in the reasonably foreseeable future and that he was neither a risk of flight nor a danger to the community.

26. For the next five years, Mr. Santacruz never missed an OSUP appointment, while building a life for himself and his family.

27. Nevertheless, ICE jailed Mr. Santacruz on January 7, 2026, when he duly reported to ICE for an appointment. ICE did not give Mr. Santacruz an opportunity to present evidence or arguments as to why his reincarceration was unnecessary at the time of his incarceration or since. The only reason ICE gave Mr. Santacruz for his reincarceration was that he was subject to a deportation order.

28. As of the date of this filing, ICE has not shown Mr. Santacruz a travel document to any country; Mr. Santacruz does not have a passport from any country; ICE has not advised Mr. Santacruz that it is seeking his removal to any country. ICE has not provided Mr. Santacruz with a prompt interview to determine whether his custody is necessary.

29. Mr. Santacruz has no disciplinary infractions or behavioral issues while in ICE custody.

30. Mr. Santacruz has no diagnosed mental health conditions and ICE is not treating him for any at the Aurora Facility.

31. Mr. Santacruz has always been cooperative with ICE's demands and ICE has never told him otherwise, as required by 8 C.F.R. § 241.4(g)(5).

32. ICE first jailed Mr. Santacruz pursuant to 8 U.S.C. § 1231 for approximately 141 days before releasing him on an OSUP. Since ICE reincarcerated Mr. Santacruz on January 7, 2026, ICE has kept Mr. Santacruz at the Aurora Facility pursuant to 8 U.S.C. § 1231 for an additional 64 days. In total, ICE has jailed Mr. Santacruz for approximately 206 days.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

ICE's Incarceration of Mr. Santacruz Violates the Statute and Constitution

33. ICE is generally required to physically remove someone subject to a final removal order during the 90-day removal period. 8 U.S.C. § 1231(a). The removal period begins on: "(i) [t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Incarceration during the removal period is mandatory. 8 U.S.C. § 1231(a)(2). Pursuant to 8 U.S.C. § 1231(a)(6), ICE "may" keep someone incarcerated beyond the 90 days under limited circumstances. 8 U.S.C. § 1231(a)(6).

34. In *Zadvydas*, the U.S. Supreme Court held that 8 U.S.C. § 1231(a)(6), when "read in light of the Constitution's demands, limits a [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." 533 U.S. at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699–700.

35. The "presumptively reasonable period of detention" for someone subject to a final order of removal is six months. *Zadvydas*, 533 U.S. at 701. ICE's administrative regulations also recognize that the Headquarters Post-Order Detention Unit ("HQPDU")

has a six-month period for determining whether there is a significant likelihood of a noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.4(k)(2)(ii).

36. ICE cannot continue to detain someone beyond the presumptive six months pursuant to 8 U.S.C. § 1231(a)(1)(C) except in limited circumstances. "A review of the case law shows that the courts have read § 1231(a)(1)(C) narrowly." *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 501 (S.D.N.Y. 2009) (collecting cases). "The Congressional intent underlying § 1231 is for the Attorney General to remove a [ ] [noncitizen] subject to an order of removal within the 90-day removal period, if possible." *Farez-Espinoza*, 600 F. Supp 2d at 502; *Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005). It is "the responsibility of [ICE] to make a bona fide attempt to do so within the removal period." *Farez-Espinoza*, 600 F.Supp.2d at 502. When ICE does not fulfill its responsibility, § 1231(a)(1)(C) does not apply. *Id.*; *Nzayikorera v. Fabbricatore, et al.*, 1:21-cv-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sept. 9, 2021) ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute") (citation and quotations omitted).

37. The statute does not permit ICE to pause and restart the presumptively reasonable period of post-removal detention by repeatedly detaining and releasing a noncitizen after a final removal order. *Farez-Espinoza*, 600 F. Supp. 2d at 499; *Ulysse v. Department of Homeland Sec.*, 291 F.Supp.2d 1318, 1325 (M.D.Fla. 2003). ICE cannot "arbitrarily trigger commencement of the removal period by simply waiting to take a [noncitizen] into custody . . . If [ICE] are allowed the liberty to decide when they will comply or even attempt compliance with the statutes that they are charged with enforcing, the statutory scheme will be rendered a nullity . . . . Federal agencies should not and do not

have such power." *Uylsee*, 291 F.Supp.2d at 1325–26; *Diaz-Ortega v. Lund*, 1:19-cv-670-P, 2019 WL 6003485, at *9–10 (W.D.La. Oct. 15, 2019). In other words, district courts should "conclude that at detainee's periods of detention should be considered together in determining whether the detention has exceeded the presumptively reasonable time under *Zadvydas*." *Aguilar v. Noem*, 25-cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025) (collecting cases). Both Judge Wang, *id.*, and Chief Judge Brimmer agree, *Pena-Gil v. Lyons*, 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025).

38. After six months of incarceration, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Aguilar*, 2025 WL 3514282, at *4. That requirement is particularly relevant when ICE, as here, revokes someone's OSUP presumably to effectuate their removal. 8 C.F.R. § 241.13(i)(2); *Pan v. Oddo*, No. 3:25-cv-00265, 2025 WL 3960013, at *2 (W.D. Pa. Dec. 1, 2025), *report and recommendation adopted*, No. 3:25-cv-265, 2025 WL 3701296 (W.D. Pa. Dec. 21, 2025).

39. Here, ICE's statutory authority to jail Mr. Santacruz expired on February 21, 2001, 180 days after his removal order became final. ICE's failure to remove Mr. Santacruz for the past five years and inability to produce a travel document to any country despite jailing Mr. Santacruz for an aggregate 206 days proves that his removal is not significantly likely in the reasonably foreseeable future. Mr. Santacruz's continued incarceration violates the statute and constitution.

ICE's Reincarceration of Mr. Santacruz Violates Procedural Due Process

40. Alternatively, this Court must order Mr. Santacruz's immediate release because ICE did not provide Mr. Santacruz with procedural due process when it decided to rejail him despite knowing his removal is not significantly likely in the reasonably foreseeable future.

41. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

42. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* A proper application of the test demonstrates ICE's unlawfulness and the need for this Court to order Mr. Tran's release.

43. First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restrain has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration "constitutes a significant deprivation of liberty that requires due process protection" no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983).

44. Mr. Santacruz has a protected liberty interest even though he was "subject to extensive conditions of release . . . ." *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D.Ca. 2025) (citation omitted); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Moreover, ICE jails Mr. Santacruz in a facility that every court in this District has determined is akin to a penal institution. *E.g.*, *Daley v. Choate*, 22-cv-03034 (RM), 2023 WL 2336052 at *4 (D. Colo. 2023). This factor therefore weighs heavily in Mr. Santacruz's favor.

45. Second, the risk of erroneous deprivation of Mr. Santacruz's liberty interest is significant because ICE's decision to re-jail Mr. Santacruz lacked *any procedures* at all, and ICE has not provided Mr. Santacruz with the required process since his reincarceration. *E.g.*, *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. Jun. 12, 2018) (finding that the petitioner's "re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest"). Moreover, there is "no statutory or regulatory entitlement to a bond hearing" for individuals like Mr. Santacruz who ICE jails pursuant to § 1231(a). *Guillermo M.R.*, 791 F.Supp.3d at 1034. This factor therefore weighs heavily in his favor because at no point was there any

notice, any process, or any independent adjudicator to consider whether stripping Mr. Santacruz of his liberty was necessary to prevent flight or danger to the community.

46. Third, Government's interest is not served by the process it gave Mr. Santacruz because, once again, it gave him no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690 (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Mr. Santacruz without notice, without cause, and without an interview after having released him five years ago does not address the government's purported interest and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond . . . ." *Id.* This factor therefore also weighs in his favor.

47. Courts have repeatedly found that ICE's failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025). This Court should do the same.

ICE's Reincarceration of Mr. Santacruz Violates ICE's Own Regulations

48. ICE's decision to reincarcerate Mr. Santacruz also violates ICE's own regulations and therefore the *Accardi* doctrine. The INA's implementing regulations require that ICE give noncitizen's notice of the reasons for an OSUP revocation and a prompt interview to respond to those reasons. 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 241.13(i); *Perez Escobar v. Moniz*, 792 F.Supp.3d 224, 225 (D.Mass. 2025) (discussing regulatory requirements for OSUP revocation); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at * 3–4 (E.D.Ca. July 16, 2025) (same)

49. Those regulations provide that a noncitizen "who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody." 8 C.F.R. § 241.4(l)(1). The regulations require the government to provide notice to the noncitizen of the "reasons for revocation of his or her release or parole" and further provide the noncitizen "an initial informal interview *promptly* after his or her return to Service custody to afford the [noncitizen] an opportunity to response to the reasons for revocation stated in the notification." *Id* (emphasis added). If not released following the informal interview, ICE must provide the jailed noncitizen the "normal review process" of custody determinations within three months after release is revoked. 8 C.F.R. § 241.4(l)(3).

50. "Government agencies are required to follow their own regulations." *Hoac*, 2025 WL 1993771, at *4 (citing *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged [action] is invalid . . . ." *Waldron*

v. I.N.S., 17 F.3d 551, 518 (2d Cir. 1993) (alterations in original). "[F]ailure to give [a noncitizen] meaningful notice of the basis for its revocation of his release violate[s] the regulation and due process." *Perez-Escobar*, 2025 WL 2084102, at *2 (citation omitted).

51. Failing to provide an interview after revocation violates the same. *Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to § 241.13" because "and most obviously . . . petitioner was not granted the required interview upon the revocation of his release"); *Ceesay*, 781 F.Supp.3d. at 166 (finding petition was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon reincarceration); *Santamaria Orellana v. Baker*, 25-1788-TDC, 2025 WL 2444087, at * 8 (D.Md. Aug. 25, 2025) (granting habeas petition for ICE's failure to, *inter alia*, oblige by regulations to revoke OSUP); *Cf. Noem v. Abrego Garcia*, 604 U.S. ---, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l), "in order to revoke conditional release the Government must provide adequate notice and promptly arrange an initial informal interview . . . to afford the [noncitizen] an opportunity to respond to the reasons for the revocation stated in the notification").

52. ICE's regulatory violations here are numerous. ICE did not provide Mr. Santacruz with notice of the revocation of his OSUP and did not provide him with a prompt interview after his incarceration. Despite stating its intention to do so, ICE did not interview Mr. Santacruz after jailing him for 30 days either. ICE's decision to rejail Mr. Santacruz is therefore invalid and this Court must order his immediate release.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231

53. Mr. Santacruz incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

54. Respondents' continued detention of Mr. Santacruz is no longer authorized by statute. *Zadvydas*, 533 U.S. at 700–01. In the aggregate, ICE has kept Mr. Santacruz jailed for approximately 206 days since his removal order became final. The removal period began on August 25, 2020. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Santacruz never sought a stay of removal from a federal court and nothing stopped the removal period clock. 8 U.S.C. § 1231(a)(1)(B). He has been cooperative with ICE throughout the removal period, duly reported to ICE when requested to do so, and is not a danger to the community.

55. There is no evidence that ICE will succeed in deporting Mr. Santacruz in the reasonably foreseeable future. On the contrary, ICE's failure to secure Mr. Santacruz's removal during the removal period is evidence enough that his removal is not significantly likely in the reasonably foreseeable future. *See Morales-Fernandez v. INS*, 418 F.3d at 1124 ("The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months . . . the petitions for habeas corpus should have been granted"); *See Zadvydas*, 533 U.S. at 701 (after "the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence to rebut that showing" or the petition will be granted).

56. ICE failed to deport Mr. Santacruz within a constitutionally compliant timeframe and there is no significant likelihood that it will be able to deport him in the reasonably foreseeable future. ICE's decision to continue Mr. Santacruz's detention is unreasonable and unlawful. *Zadvydas*, 533 U.S. at 701; *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

COUNT TWO

Respondents Unreviewed Incarceration of Mr. Santacruz Violates Due Process

57. Mr. Santacruz incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

58. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citation omitted).

59. ICE has not provided Mr. Santacruz with any meaningful procedural protections and its decision to keep him incarcerated is an unconstitutional use of 8 U.S.C. § 1231. When ICE issued Mr. Santacruz's OSUP it found that he was neither a danger to the community nor a flight risk. When ICE revoked his OSUP, Mr. Santacruz had duly reported to all of his appointments with ICE and ICE had not secured necessary travel documents for removal.

60. Mr. Santacruz's incarceration therefore does not bear a reasonably relationship to the two lawful purposes of immigration detention: preventing danger to the community and flight prior to removal.

61. Because ICE had no legitimate, non-punitive objective in revoking Mr. Santacruz's OSUP, Mr. Santacruz's incarceration violates substantive due process under the Fifth Amendment.

COUNT THREE

Violation of Procedural Due Process

62. Mr. Santacruz incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

63. ICE has yet to provide Mr. Santacruz with any process related to its decision to revoke his OSUP and re-jail him. Respondents' revocation of Mr. Santacruz's OSUP without providing notice and a meaningful opportunity to be heard violates procedural due process under the Fifth Amendment.

COUNT FOUR

Violation of the *Accardi* Doctrine

64. Mr. Santacruz incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

65. Under the *Accardi* doctrine, Mr. Santacruz has a right to set aside agency action that violated agency procedures, rules, or instructions. *Accardi*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

66. Respondents' failure to provide Mr. Santacruz with notice of its revocation, the reasons for the revocation, an opportunity to respond to those alleged reasons, and a prompt custody review, or any custody review, after his reincarceration violates ICE's binding regulations.

67. Under *Accardi*, Respondents' revocation of the OSUP and reincarceration of Mr. Santacruz should be set aside for violating agency procedures, rules, or instructions

COUNT FIVE

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

68. Mr. Santacruz incorporates by reference the allegations of fact and statements of law set forth in the preceding paragraphs.

69. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

70. Respondents' revocation of Mr. Santacruz's order of supervision was arbitrary and capricious because it violated the statute, regulation, and the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Mr. Santacruz prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Mr. Santacruz outside of the jurisdiction of the District of Colorado pending the resolution of this case;

(3) Issue a writ of habeas corpus directing Respondents to immediately release Mr. Santacruz from ICE custody pursuant to the same or less onerous conditions on which ICE released Mr. Santacruz on his original OSUP;

(4) Award Mr. Santacruz attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

(5) Grant any other and further relief that this Court deems just and proper.

Dated this 13th day of March, 2026

/s/ Daniel Herrera
Daniel Herrera (CO 59485)
Hans Meyer (CO 37812)

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VERIFICATION

I, Leslie Bezanilla, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: March 13, 2026

CERTIFICATE OF SERVICE

I, Daniel Herrera, hereby certify that on March 13, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail by close of business Tuesday March 17, 2026 or pursuant to any forthcoming Court order requiring something else. Based on prior conferrals we anticipate Kevin Traskos, attorney for Respondents, will accept service on behalf of all Respondents.

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
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Denver, CO 80202

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Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

Office of the General Counsel

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And to:

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And to:

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