UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 26-cv-1390

Anthony Jonathan Hernandez Montes,

Petitioner,

v.

DAWN CEJA, Warden, Aurora ICE Processing Center;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and
PAM BONDI, Attorney General of the United States,

in their official capacities,

Respondents.

PETITION FOR HABEAS CORPUS

INTRODUCTION

Petitioner Anthony Hernandez Montes is a noncitizen in the custody of Immigration and Customs Enforcement ("ICE") at the Aurora ICE Processing Center ("AIPC"), operated by GEO Group, Inc. On October 1, 2025, Petitioner was granted withholding of removal under 8 U.S.C § 1231(b)(3) by an Immigration Judge ("IJ") at the conclusion of his removal proceedings. After being granted that relief, Petitioner was enrolled in a non-detention supervision program with ICE based on the finding that petitioner is neither a flight risk nor a danger to the community. Despite complying with all requirements of his supervision program, Petitioner was detained on October 7, 2025, at a routine, scheduled appointment that he voluntarily attended.

ICE detained Petitioner without notice or opportunity to be heard, and that decision to detain the Petitioner violates agency rules. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Petitioner brings this action for injunctive, habeas, and declaratory relief and requests an order for Respondents to release him.

JURISDICTION

This action arises under 28 U.S.C. § 2241, the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq*., and its implementing regulations, the Administrative Procedures Act, 5 U.S.C. §§ 500-596, §§ 701-706, the All Writs Act, 8 U.S.C. § 1651, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Constitution of the United States. District Courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief under habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

Venue is proper because Dawn Ceja is Petitioner's immediate custodian under 28 U.S.C. § 1391(e)(1), and Petitioner is in custody at AIPC operated by GEO Group, Inc. in Aurora, Colorado, which is within the jurisdiction of this District.

Venue is proper in this District because Respondents are officers, employees, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District of Colorado. 28 U.S.C. § 1391(e).

PARTIES

Petitioner is a citizen of Nicaragua and is currently detained at the AIPC in Aurora, Colorado. He is in the custody, and under the direct control, of Respondents and their agents.

Respondent Dawn Ceja is the Warden of AIPC, and she has immediate physical custody of Petitioner pursuant to the facility's contract with ICE to detain noncitizens. Thus, Respondent Dawn Ceja is a legal custodian of Petitioner.

Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. Respondent Todd Lyons is a legal custodian of Petitioner and has authority to release him.

Respondent Kristi Noem is named in her official capacity as the Secretary of the DHS. In this capacity, Respondent Kristi Noem is responsible for the implementation and enforcement of

the Immigration and Nationality Act ("INA"), and oversees ICE, the agency responsible for Petitioner's detention. Respondent Kristi Noem is a legal custodian of Petitioner.

Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office of Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Pam Bondi is a legal custodian of Petitioner.

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

The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require that Respondents file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. "The Great Writ" has been referred to as "perhaps the most important writ known to the constitutional law…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).

STATEMENT OF FACTS

1. Mr. Hernandez is a 32-year-old citizen of Nicaragua.
2. Mr. Hernandez entered the United States on or about September 7, 2021. Ex. 1, Form I-213. Approximately two days later, on September 9, 2025, Mr. Hernandez encountered Customs and Border Patrol ("CBP") and was transported to the Central Processing Center in El Paso, Texas, where he was detained after he requested an interview with an Asylum Officer. *Id.*

3. The Department of Homeland Security ("DHS") initiated removal proceedings by filing a Notice to Appear ("NTA") with EOIR on or about September 13, 2021. Exhibit 2., Notice to Appear.
4. Mr. Hernandez was released on recognizance on September 21, 2021, and placed in the Intensive Supervision Appearance Program ("ISAP") where he attended monthly check-ins with ICE beginning December 20, 2021. Exhibit 3, Order of Release on Recognizance. Mr. Hernandez met all the requirements for the ISAP program until it was terminated in 2023.
5. Mr. Hernandez complied with the court's requirement to notify of a new address. However, as Mr. Hernandez's housing was unstable, this resulted in several changes of addresses, and notices of hearings were sent to the incorrect address. Consequently, Mr. Hernandez missed a master calendar hearing and an order of removal *in absentia* was entered. Mr. Hernandez filed a Motion to Reopen, and his case was ultimately reopened by EOIR.
6. On October 1, 2025, Mr. Hernandez appeared for an individual merit hearing. At that hearing, an Immigration Judge ("IJ") found Mr. Hernandez ineligible for asylum and ordered him removed; however, Petitioner's application for Withholding of Removal pursuant to INA § 241(b) was approved. Exhibit 4, Order dated October 1, 2025. In granting that application, the Immigration Judge found that Petitioner established that his "life or freedom would be threatened in [Nicaragua] because of [Petitioner's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3). *Id.*
7. Upon information and belief, after being granted this protection against removal from the United States, Petitioner was placed on an Order of Supervision ("OSUP").
8. Petitioner complied with all conditions of supervision, yet Petitioner was detained by ICE after voluntarily attending a scheduled "check-in" appointment on October 7, 2025.

9. Upon information and belief, sometime after being detained on October 7, 2025, Petitioner was served with a document indicating Respondents' intent to remove Petitioner to Mexico.
10. On March 30, 2026, at approximately 8 a.m., an asylum officer from the United States ("U.S.") Citizenship and Immigration Services ("CIS") contacted undersigned counsel's office indicating they needed to speak about Petitioner's case. However, the CIS officer disconnected the call before undersigned counsel's office could connect her to the call.
11. Upon information and belief, the official responsible for revoking Petitioner's order of supervision did not first refer the case to the ICE Executive Associate Director. There were no findings made that revocation was in the public interest, nor that circumstances did not reasonably permit referral to the Executive Associate Director. Finally, the revoking official had not been explicitly delegated authority to revoke an order of supervision.
12. Upon arrest, ICE transferred Petitioner to the AIPC, where he is currently detained.
13. Upon information and belief, at no time following Petitioner's arrest did ICE explain why it revoked Petitioner's order of supervision or give him an opportunity to respond to those reasons.
14. To date, no IJ has ordered Petitioner removable to or country other than Nicaragua.
15. To date, Petitioner has not received notification that any country other than Nicaragua has agreed to provide a travel document or any other type of document that allows Petitioner to enter a third country.

LEGAL FRAMEWORK

Due Process Governs Decisions to Revoke an Order of Supervision

"The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533

U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." Id. at 690 (2001).

Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *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). Statutes and Regulations govern procedures for Revoking an Order of Supervision.

A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period"). A noncitizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* at § 1231(a)(6). Even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of

course, the [noncitizen's] release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances" *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); see also id. § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute [,]" courts question whether these regulations are ultra vires of statutory authority. *See*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

It is clear, however, that regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. §

241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

The APA Sets Minimum Standards for Final Agency Action

The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.34. Final agency actions are those (1) that "mark the consummation of the agency's decision making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

ICE's revocation of an Order of Supervision is a final agency action subject to this Court's review. The revocation here marked the consummation of ICE's purported decision making process regarding Petitioner's custody. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

The Accardi Doctrine Requires DHS and ICE Follow Their Own Procedures

Under the Accardi doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also

Morton v. Ruiz, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

Accardi is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under Accardi, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an "orderly departure," ICE's failure to follow that instruction is an Accardi violation. See *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

CLAIMS FOR RELIEF

Count One:

Violation of the Fifth Amendment Right of the U.S. Constitution: Substantive Due Process

1. The allegations in the above paragraphs are realleged and incorporated herein.
2. Petitioner was granted withholding of removal on October 1, 2025, at the Denver EOIR. Petitioner had been living and working in the Denver Metro area since 2021, and complied with every ISAP check-in appointment, and appeared at the court hearings to which he received

notice. Throughout these four years, Petitioner filed for asylum, applied for and received a work permit, and formed connections within his community. Respondents did not detain Petitioner at any time during these four years when he was waiting for his individual merit hearing.

3. Petitioner was detained *after he was granted withholding of removal* by an IJ. The only changed circumstance that Respondents can point to is that an IJ heard his case and determined that Petitioner needed protection from persecution in Nicaragua, and granted his application for withholding of removal under the INA.[1] Petitioner won his case, and then he was detained six days later - the only change in Petitioner's case was that he was granted relief by an IJ.
4. Petitioner's detention does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight risk.
5. Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order of supervision, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

Count Two:

Violation Of the Fifth Amendment Right of the U.S. Constitution: Procedural Due Process

6. The allegations in the above paragraphs are realleged and incorporated herein.
7. Courts must to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3)

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[1] Because Petitioner filed his asylum application after the one-year filing deadline, he was statutorily barred from receiving a grant of asylum.

the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

8. The first factor, the private interest affected, favors Petitioner. "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, *see Fourcha v. Louisiana*, 504 U.S. 71, 80 (1992). Immigration proceedings are civil, and detention is authorized to prevent danger to the community and flight risk. Petitioner was released from detention for four years and participated in ISAP and was never assessed to be a danger to the community. Therefore, danger could not be the justification for his continued detention. Petitioner is also not a flight risk because (a) his immigration proceedings have concluded, and he was granted withholding of removal, and removal seems a remote possibility, at best. Therefore, Petitioner has nothing to flee. Thus, the first factor weighs in Petitioner's favor.

9. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, also favors Petitioner. To safeguard against erroneous deprivations of liberty, statute specifies the limited number of reasons that an order of supervision can be revoked. Regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. Respondents violated those laws here, leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring Respondents to give notice and an opportunity to respond prior to revoking an order of supervision is of great value because it reduces the probability of needless detention of a person, like Petitioner, who is neither dangerous nor a flight risk.

10. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of an order of supervision, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead provide notice and a meaningful opportunity to respond prior to revoking an order of supervision reduces fiscal and administrative burdens on the government.
11. For these reasons, revoking Petitioner's order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

Count Three:

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

Contrary to Law and Constitutional Right

12. The allegations in the above paragraphs are realleged and incorporated herein.
13. Under the APA, a court shall "hold unlawful and set aside agency action...found to be…not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).
14. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

15. Respondents' revocation of Petitioner's order of supervision was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.
16. The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above.
17. Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director.
18. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute.
19. Even assuming regulations purporting to offer additional justifications for revocation of an order of supervision are not ultra vires, Respondents did not comply with them, nor did the Respondents give Petitioner notice of the reasons for revocation and opportunity to be heard.
20. The revocation should be found unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

Count Four:

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A): Arbitrary and Capricious

21. The allegations in the above paragraphs are realleged and incorporated herein.
22. 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).
23. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

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

25. Respondents' decision to revoke Petitioner's order of supervision ran counter to the evidence before the agency that Petitioner was compliant with the terms of his OSUP and no new facts or changed circumstances suggest he would not continue to comply with the terms of his OSUP.

26. The revocation also "failed to consider important aspects of the problem" before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

27. First, Respondents failed to consider the serious constitutional concerns raised by revoking Petitioner's order of supervision without notice and opportunity to respond.

28. Second, Respondents failed to consider the increased administrative burden to the agency caused by revoking the order of supervision of Petitioner, including financial and administrative costs incurred by the agency due to unnecessary detention.

29. Third, Respondents failed to consider Petitioner's substantial reliance interest, created by its instruction on Petitioner's release notification, the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents.

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

Count Five:

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

31. The allegations in the above paragraphs are realleged and incorporated herein.

32. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

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

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

35. Regulations that purport to give Respondents authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)

36. Respondents' revocation of Petitioner's OSUP was based on ultra vires regulations in excess of statutory authority and should be held unlawful and set aside.

Count Six:

Ultra Vires Action

37. The allegations in the above paragraphs are realleged and incorporated herein.

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

39. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

Count Seven:

Violation of the *Accardi* Doctrine

40. The allegations in the above paragraphs are realleged and incorporated herein.

41. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

42. Respondents violated agency regulations governing who and upon what findings it may properly revoke an order of supervision when it revoked Petitioner's order. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (*citing Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also*, e.g., *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

43. Respondents also violated agency instructions in Petitioner's release notification to give an opportunity to prepare for an orderly departure when they revoked Petitioner's order without advance notice.

44. Under *Accardi*, Respondents' revocation of the order of supervision and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court:

(1) Exercise jurisdiction over this matter;

(2) Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi* Doctrine;

(4) Order Petitioner's immediate release;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Order such other relief this Court may deem just and proper.

Respectfully submitted,

/s/ Leanne Reetz Hightower

Leanne Reetz Hightower
Barringer Law Firm, P.C.
5660 Greenwood Plaza Boulevard
Suite 445
Greenwood Village, CO 80111
Attorney for Petitioner

Dated: 1st day of April 2026

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

I represent Petitioner, Anthony Hernandez Montes, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 1st day of April 2026.

/s/ Leanne Reetz Hightower

Leanne Reetz Hightower
Barringer Law Firm, P.C.
5660 Greenwood Plaza Boulevard
Suite 445
Greenwood Village, CO 80111
Attorney for Petitioner