IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-3463

YUNIER SABORIT AGUILAR,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security,

PAMELA BONDI, in her official capacity as
Attorney General of the United States,

TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement,

ROBERT GUADIAN, in his official capacity as
Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,

JUAN BALTAZAR, in his official capacity as
Warden of the Aurora Contract Detention Center

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Yunier Saborit Aguilar seeks habeas relief from unlawful civil detention. After re-entering the United States in February 2022, passing a Reasonable Fear Interview, and being placed in withholding-only proceedings, ICE released him on

an Order of Supervision ("OSUP"). While he was complying with that OSUP and awaiting his final hearing at the Denver Immigration Court, Immigration and Customs Enforcement ("ICE") unilaterally revoked the OSUP and re-detained him—without prior notice, stated grounds, or any opportunity to contest the action before a neutral arbiter. His case was then transferred to the Aurora Immigration Court, where, on September 18, 2025, an Immigration Judge granted withholding of removal; the Department of Homeland Security ("DHS") waived appeal, rendering that grant final, and his administrative proceedings over. Despite final relief that bars his removal to Cuba, ICE continues to imprison him and still has afforded no meaningful process to challenge detention.

2. Two violations control. First, the revocation of the OSUP—without notice, without findings by an authorized official, and without any hearing—violated the Fifth Amendment and binding DHS regulations under the *Accardi* doctrine at the moment revocation occurred. Second, continued detention after a final, unappealed grant of withholding—when removal to Cuba is barred—lacks any legitimate, nonpunitive purpose and violates substantive due process. Periodic 90-day custody reviews do not cure either defect; they are not a substitute for the pre-revocation process the Constitution and regulations require, and they provide no neutral adjudication of ongoing confinement.

3. Habeas corpus protects against precisely this kind of executive overreach. The Court should order Petitioner's immediate release or, at minimum, a prompt, constitutionally adequate, and neutral custody hearing at which the government bears the burden to justify detention and the Court considers less-restrictive alternatives.

JURISDICTION AND VENUE

4. Petitioner is challenging his unlawful detention by Immigration and Customs Enforcement. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act). Moreover Administrative Procedure Act claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"); 5 U.S.C. § 702.

5. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

6. Venue is proper under 28 U.S.C. §§ 1391(b) and (e)(1) because Petitioner is detained in this District, his immediate physical custodian is located here, and the operative events occurred here.

PARTIES

7. Petitioner **YUNIER SABORIT AGUILAR** is a 33-year-old Cuban national who was placed in "withholding-only" proceedings in April 2022. On June 16, 2025, ICE arrested and detained Petitioner at the for-profit detention facility in Aurora, Colorado, operated by the GEO Group, Inc. Immigration and Customs Enforcement continued to

detain Petitioner without a hearing or an opportunity to contest his detention before a neutral arbiter.

8. Respondent **JUAN BALTAZAR** is named in his official capacity as the warden of the Aurora Contract Detention Facility. Juan Baltazar is employed by The GEO Group, the private company that contracts with ICE to run this facility. As such, he is the immediate physical custodian of Petitioner.

9. Respondent **ROBERT GUADIAN** is named in his official capacity as the Field Office Director for Denver ICE. As Field Office Director, Respondent Guadian oversees ICE's enforcement and removal operations in Denver. As such, he is a legal custodian of Petitioner.

10. Respondent **TODD LYONS** is named in his official capacity as Acting Director U.S. Immigration and Customs Enforcement and as such is the legal custodian of Petitioner.

11. Respondent **KRISTI NOEM** is named in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, she is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Lyons, Guadian, and Baltazar. Secretary Noem is the ultimate legal custodian of Petitioner.

12. Respondent **PAMELA BONDI** is named in her official capacity as the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration laws

pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Petitioner's removal and bond proceedings, and as such, she is Petitioner's legal custodian.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. No administrative remedies exist. Individuals in withholding-only proceedings are detained under 8 U.S.C. § 1231 and are ineligible for immigration-court bond hearings. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). Having been granted withholding of removal, he cannot be deported to Cuba, yet ICE continues to detain him. There is no administrative process to challenge that detention. His claim is therefore properly before this Court.

FACTS

A. 2019 Entry, 2020 Removal, Persecution in Cuba

1. Petitioner is a 33-year-old Cuban dissident from who first entered the United States in June 2019 after repeated persecution by Cuban authorities for his political activities. He applied for asylum, was denied, and removed in March 2020. Upon return, Cuban counterintelligence detained and tortured him, accusing him of being a spy for the United States government. Over the next two years, he was repeatedly arrested, detained, jailed, and abused for continuing opposition activities with the Patriotic Union of Cuba (Spanish: *Unión Patriótica de Cuba*, abbreviated "UNPACU").

B. 2022 Re-Entry and Withholding-Only Proceedings

2. On February 19, 2022, he re-entered the United States and immediately expressed fear to Border Patrol officers. The Border Patrol officers reinstated Petitioner's prior 2020 removal order under 8 U.S.C. § 1231(a)(5) but referred him to a "Reasonable

Fear Interview" with an asylum officer for further screening and processing. After establishing a reasonable fear of persecution, he was referred to withholding-only proceedings before an Immigration Judge, where the only available relief was withholding of removal or Convention Against Torture protection. *See* 8 C.F.R. § 208.2(c)(2)(i); *Riley v. Bondi*, 145 S. Ct. 2190, 2197–98 (2025).

C. Release on OSUP and Full Compliance

3. Detained at the outset under § 1231, on May 17, 2022, ICE released him on an OSUP requiring regular reporting during the pendency of his withholding only proceedings. He complied fully, attended hearings and check-ins, worked lawfully with employment authorization, lived with his family, and structured his affairs in reliance on the government's supervision framework.

D. Unilateral OSUP Revocation and Re-Detention Before the Final Hearing

4. On June 16, 2025, weeks before his next scheduled check-in and while awaiting his final hearing at the Denver Immigration Court, ICE officers waited outside his home, arrested him, and revoked his OSUP without notice, stated grounds, or an opportunity to respond. He was re-detained at the Aurora Contract Detention Facility.

E. Grant Withholding of Removal; DHS Waiver; Ongoing Detention

5. Thereafter, venue for his withholding-only case shifted to the Aurora Immigration Court. On September 18, 2025, an Immigration Judge granted withholding of removal. DHS waived appeal, rendering the order final that day. Petitioner cannot be removed to Cuba. Despite that final relief and the absence of any violation of OSUP terms, ICE continues to detain him without access to a neutral adjudicator.

LEGAL FRAMEWORK

A. Procedural Due Process: The OSUP Revocation Itself Was Unconstitutional and Unlawful

6. "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 the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty," *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). Before the government deprives a person of liberty, it must provide notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976). ICE revoked Petitioner's OSUP and arrested him at his home without notice, without an opportunity to contest revocation, and without a neutral decisionmaker. The due-process violation was complete at revocation. Later file reviews do not retroactively supply pre-deprivation process.

B. *Accardi*: DHS Violated Binding Regulations Governing Revocation

7. 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, 8 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)

8. Revocation of supervision requires an authorized official, public-interest findings, and notice with an opportunity to respond. 8 C.F.R. § 241.4(l)(1)–(2); § 241.13(i). Delegations must expressly confer revocation authority. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161–69 (W.D.N.Y. 2025). ICE provided no pre-revocation notice or prompt interview and, on the current record, acted without the required findings or express delegation. That failure is an *Accardi* violation requiring relief. *See Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated on other grounds*, 2019 WL 6826008 (2d Cir. July 30, 2019); *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).

C. STATUTORY FRAMEWORK: 8 U.S.C. § 1231 CONTROLS DETENTION AND SUPERVISION; *ZADVYDAS* IMPOSES CONSTITUTIONAL LIMITS

9. 8 U.S.C. § 1231 governs here. "When an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). Detention is mandatory during that 90-day "removal period." 8

U.S.C. § 1231(a)(2). After that period, the Government "may" continue detention or release the person under supervision, including those ordered removed for specified criminal grounds. 8 U.S.C. § 1231(a)(6).

10. The statute does not state a fixed duration for post-period detention. *Zadvydas* construes § 1231(a)(6) to authorize only detention "reasonably necessary to bring about the alien's removal," with six months "presumptively reasonable." 533 U.S. at 689, 701. After six months, once 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 sufficient to rebut that showing." *Id.* at 701. *Zadvydas's* procedural and evidentiary framework is not limited to continuous, uninterrupted confinement; courts apply it in revocation contexts as well. *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025).

D. The Six-Month *Zadvydas* Clock Is Cumulative; It Has Run Here

11. Most courts hold the *Zadvydas* period is cumulative, not reset by re-detention, to prevent indefinite imprisonment through cycles of release and re-arrest. *See Nguyen v. Scott*, 2025 WL 2419288, at *13 (W.D. Wash.); *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass.); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex.); *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La.); *Hamama v. Adducci*, 2019 WL 2118784, at *3 (E.D. Mich.); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal.); *Chen v. Holder*, 2015 WL 13236635, at *2 (W.D. La.). *But see Guerra-Castro v. Parra*, 2025 WL 1984300, at *4 (S.D. Fla.); *Thai v. Hyde*, 2025 WL 1655489, at *3 (D. Mass.). The concern animating the cumulative approach is present here: ICE revoked supervision and

re-detained Petitioner while his case was still pending, despite no intervening violation or change.

12. Petitioner was detained for approximately two months in 2022 before release on OSUP. He was re-detained on June 16, 2025, and has remained in custody through the present. The combined detention exceeds six months. Under *Zadvydas*, the presumption of reasonableness has expired, shifting the burden to the Government to rebut Petitioner's showing that removal is not significantly likely in the reasonably foreseeable future.

E. Regulation 8 C.F.R. § 241.13 Governs Both the Burden and the Procedures; The Government Has Not Met Either

13. 8 C.F.R. § 241.13 implements *Zadvydas*. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967, 56970 (Nov. 14, 2001). It "establishes special review procedures" where the noncitizen provides "good reason to believe there is no significant likelihood of removal … in the reasonably foreseeable future." 8 C.F.R. § 241.13(a), (d)(1), (g). After an initial release on supervision, the Government may revoke release and return the person to custody only "if, on account of changed circumstances, *the Service determines* that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." § 241.13(i)(2) (emphasis added). Courts applying 8 C.F.R. § 241.13(i)(2) uniformly place this burden on the Government at revocation. *See Escalante*, 2025 WL 2206113, at *3–4; *Balouch v. Bondi*, 2025 WL 2871914, at *2–3 (E.D. Tex.); *Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn.); *Van Nguyen v. Hyde*, 2025 WL 1725791, at *3 (D. Mass.).

14. Upon revocation, ICE must provide written notice of reasons and promptly conduct an informal interview to afford the person an opportunity to respond and submit evidence. 8 C.F.R. § 241.13(i)(3). Boilerplate recitals and conclusory declarations are insufficient to show either "changed circumstances" or a "significant likelihood" of removal. *See Escalante*, 2025 WL 2206113, at *4; *Balouch*, 2025 WL 2871914, at *3; *Roble*, 2025 WL 2443453, at *3–5.

15. Petitioner cannot be removed to Cuba consistent with his final withholding order and DHS's waiver of appeal. The Government identified no "changed circumstances" at the time of revocation and gave no pre-revocation notice or prompt interview. There is no individualized evidence of a significant likelihood of removal to any country in the reasonably foreseeable future. Conclusory assertions cannot satisfy 8 C.F.R. § 241.13(i)(2)–(3).

F. Substantive Due Process: Continued Post-Withholding Detention Lacks Any Legitimate Purpose

16. Under substantive due process doctrine, a restraint on liberty is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). Civil detention is constitutionally permissible only to mitigate danger or ensure appearance for removal. *Zadvydas*, 533 U.S. at 690–92; *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). After a final grant of withholding and DHS's waiver of appeal, removal to Cuba is legally barred. *See* 8 C.F.R. § 208.2(c)(2)(i); *Riley v. Bondi*, 145 S. Ct. 2190, 2197–98 (2025). Detention no longer serves either recognized purpose. When removal is not reasonably foreseeable, continued detention is unauthorized and

unreasonable; release should be under appropriate supervision. *Zadvydas*, 533 U.S. at 699–700.

G. DHS's 90-Day Reviews Do Not Remedy Either Violation

17. 8 U.S.C. § 1231's periodic custody reviews occur post-deprivation and are conducted by the detaining agency itself. They neither supply the pre-revocation notice and opportunity to be heard that due process and 8 C.F.R. § 241.13(i)(3) require nor provide a neutral adjudicator to test continued confinement. They cannot substitute for the Constitution's guarantees or for Accardi-mandated procedures.

H. An Order of Supervision May Only Be Revoked When Certain Circumstances Exist

18. The government has obligations towards non-citizens subject to mandatory detention under 8 U.S.C. § 2131(a)(5). For example, individuals whose detention is governed by 8 U.S.C. § 1231(a)(5), like Petitioner, are afforded the right to custody review after 90 days of detention. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4.

19. In a custody review, the government must determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(a). If there is not, and if the noncitizen does not present a public safety or flight risk, the government is obligated to release them from detention. 8 C.F.R. § 241.13(g)(1) ("Unless there are special circumstances justifying continued detention, the Service shall promptly make arrangements for the release of the alien subject to appropriate conditions.").The statute and regulations contemplate that release of noncitizens subject to 8 U.S.C. § 1231(a) may only be under an order of supervision.

20. But 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 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. 30. 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").

21. The regulations permit only certain officials to re-detain individuals released on Orders 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 find 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).

22. 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).

CLAIMS FOR RELIEF

COUNT I:

Violation of Fifth Amendment Procedural Due Process Protections

23. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

24. Procedural due process requires notice and a meaningful opportunity to be heard before the Government may deprive an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

25. One of the first inquiries in any case of violation of procedural due process is whether the plaintiff has a protected property or liberty interest and, if so, the extent or scope of that interest. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972). Reliance on government policies and assurances may give rise to protected expectations under the Due Process Clause. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

26. Petitioner has a substantial, legally protectable liberty interest, created by his reliance on his OSUP and the government's related assurances, at stake. ICE revoked

Petitioner's Order of Supervision and re-detained him without any notice of the grounds, without an opportunity to contest revocation, and without access to a neutral decisionmaker. No pre-deprivation procedures were observed.

27. The periodic 90-day custody reviews required under 8 U.S.C. § 1231 are not an adequate substitute. They occur only after liberty has already been taken; they are conducted by the same agency effecting detention, and they do not provide a neutral forum.

28. The deprivation of liberty was therefore procedurally unlawful from the moment of revocation. The risk of erroneously depriving Petitioner of that interest is severe, as he is separated from his family, community, and work indefinitely, and has been thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process. By failing to provide Petitioner with notice, an opportunity to be heard, and meaningful review, Respondents violated the Fifth Amendment.

COUNT II

Violation of Fifth Amendment under the *Accardi* Doctrine

29. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

30. Under the *Accardi* doctrine, the government and agencies must follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). Where a regulation governing agency behavior has been promulgated, citizens and noncitizens alike are entitled to "that due process required by the regulations." *Id.* at 268.

31. DHS's regulations strictly limit the revocation of release under an Order of Supervision. Revocation may occur only if an authorized official makes express findings of "changed circumstances" establishing a "significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Moreover, DHS must provide written notice of the reasons for revocation and promptly conduct an interview affording the detainee a chance to respond. 8 C.F.R. § 241.13(i)(3).

32. None of these requirements were satisfied. Petitioner was re-detained at his home without prior notice, no individualized finding of changed circumstances was made, no evidence of foreseeable removal exists, and no prompt post-revocation interview was provided. "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).

33. Because Respondents failed to follow the regulations that govern their own conduct, revocation of Petitioner's OSUP and his continuing detention are unlawful under *Accardi*.

COUNT III

Violation of Fifth Amendment Substantive Due Process Protections

34. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

35. Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint "lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690. The Constitution forbids the Government from detaining a person where detention no longer serves a legitimate, nonpunitive purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001). Immigration detention is permissible only to prevent danger to the community or ensure appearance for removal.

36. Petitioner has been granted withholding of removal by an Immigration Judge, a decision DHS declined to appeal, rendering it final. He cannot lawfully be removed to Cuba. Nor has DHS identified any viable third-country option for removal. Detention therefore serves neither recognized purpose.

37. In these circumstances, continued confinement is unreasonable, and contrary to the substantive protections of the Due Process Clause. The Fifth Amendment does not permit the Government to imprison Petitioner indefinitely when removal is legally foreclosed and no legitimate governmental interest is advanced.

COUNT IV

Violation of the Administrative Procedure Act

38. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

39. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

40. At the time of Petitioner's 2025 arrest, Petitioner had been released under an OSUP awaiting his final hearing at the Denver Immigration Court. Detaining Petitioner despite not changed circumstances suggesting he presents any risk of flight or threat to public safety, and his continued detention after being granted withholding of removal, is arbitrary, capricious, and an abuse of discretion. 8 C.F.R. § 241.13(i)(2)-(3).

41. The arbitrary and capricious detention of Petitioner, despite his prior valid grant of an OSUP, and the grant of withholding of removal that bars his removal to Cuba, causes him irreparable harm with each day he remains detained. For the reasons articulated above, this court should find that any decision to detain Petitioner is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. §§ 706(2)(A), (E) (The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence.").

PRAYER FOR RELIEF

Petitioner respectfully requests that the Court grant the following relief:

A. Assume jurisdiction over this matter;

B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension, and set the matter for prompt hearing;

C. Prohibit Petitioner's removal from the United States and transfer outside the District of Colorado during the pendency of this action;

D. Declare that Petitioner's arrest and continued detention are unlawful;

E. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody;

F. In the alternative, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention;

G. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

H. Grant any other and further relief that this Court deems just and appropriate.

Dated: October 30, 2025.

Respectfully submitted,

s/ Aaron Slade
NOVO LEGAL GROUP, LLC
4280 Morrison Road
Denver, Colorado 80219
(303) 335-0250
ASlade@novo-legal.com