

BENJAMIN CORNELL, WSB #49553
ASCENT LEGAL, PLLC
5401 South Tacoma Way, Office 13
Tacoma, WA 98409
Office: (253) 300-6918
ben@ascentlegal.net

Attorney for Petitioner

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

Rey Enrique DIAZ DE ARMAS,

Petitioner,

v.

KRISTI NOEM, Secretary for the Department
of Homeland Security; TODD LYONS,
Acting Director, Immigration and Customs
Enforcement; CAMILLA WAMSLEY, Field
Office Director, Immigration and Customs
Enforcement Seattle Field Office; BRUCE
SCOTT, Warden, Northwest ICE Processing
Center,

Respondents.

Case No. 2:25-cv-02250

Agency No. 

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner is native of Cuba who lawfully entered the United States on November 1, 2023, via a parole entry program created by Department of Homeland Security (“DHS”) under 8 U.S.C. § 1182(d)(5). One year later, he applied to adjust his status to permanent resident while still in a valid period of parole. Nonetheless, after committing no crimes or immigration violations, he was arrested in Oregon on November 1, 2025, with ICE agents using multiple vehicles to surround his cousin’s car. Petitioner was given no reason for the necessity of this act and is now detained in the Northwest ICE Processing Center in Tacoma, Washington. In the early morning hours of November 9, he was nearly transferred by ICE to a rural Louisiana detention facility where he would face difficulty communicating with his family and counsel. Petitioner only remains in this federal district because the plane used for transportation became full. A writ of habeas corpus is necessary and proper given the facts of this case.

PARTIES

2. Petitioner, Mr. Rey Enrique Diaz de Armas, is a Cuban citizen and national who is presently detained at the Northwest ICE Processing Center in Tacoma, Washington.

3. Respondent, Ms. Kristi Noem, is sued in her official capacity as the Secretary of the Department of Homeland Security. She is sued as the cabinet-level secretary responsible for all immigration enforcement in the United States.

4. Respondent, Mr. Todd Lyons, is sued in his official capacity as the Acting Director of Immigration and Customs Enforcement (“ICE”), which is responsible for all immigration enforcement in the United States.

5. Respondent, Ms. Cammilla Wamsley, is sued in her official capacity as the Field Office Director of Seattle's ICE Field Office, which is responsible for the apprehension, detention, and removal of noncitizens within the Field Office's jurisdiction. She is the immediate legal custodian of the Petitioner for purposes of a federal habeas petition.

6. Respondent, Mr. Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention facility where Petitioner is being held in federal custody. He exercises direct custody over the Petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1101 et. seq.; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (affording immigrants Due Process under the Fifth Amendment).

8. 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).

9. The Court may grant relief under the 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

10. Venue is appropriate under 28 U.S.C. § 1391(e)(1) because the Petitioner is detained in this judicial district.

11. For these same reasons, divisional venue is proper under Local Rule 3-2.

FACTUAL ALLEGATIONS

12. Petitioner was granted humanitarian parole under the Cuban Haitian Nicaraguan Venezuelan (“CHNV”) program instituted by DHS in January of 2023. He applied via a sponsor in the United States (his uncle) and was approved for a paroled entry while still in Cuba. Petitioner then entered the United States lawfully on November 1, 2023, through the Miami, FL Port-of-Entry, and was subsequently issued an I-94 indicating a “CHP” (Cuban Humanitarian Parole) entry through the CHNV program.

13. Soon afterward, Petitioner established a residence located at 


14. On November 28, 2024, Petitioner lawfully applied to adjust his status under the Cuban Refugee Adjustment Act (“CAA”). *See* PL 89-732, 80 Stat 1161 (Nov. 2, 1966). To be eligible for this benefit, U.S. Citizenship and Immigration Services (“USCIS”) requires that an applicant be (1) a native or citizen of Cuba, (2) inspected and admitted or paroled into the U.S. after January 1, 1959, (3) not inadmissible to the United States under 8 U.S.C. § 1182, (4) physically present at the time of filing Form I-485, (6) physically present for at least one year before filing Form I-485, and (7) one who has properly filed their application to adjust status. Petitioner’s I-485 was accepted by USCIS, and his fingerprints were captured for biometric purposes on January 10, 2025.

15. Petitioner’s period of CHNV humanitarian parole expired on June 12, 2025, while his application to adjust status or register permanent residence was lawfully pending.

16. Petitioner has had no criminal arrests in the United States.

17. Petitioner received authorization to work in the United States and has not been employed without authorization.

18. In 2025, Petitioner filed Form 1040 with the IRS and does not owe any overdue taxes to the government.

19. On November 1, 2025, Petitioner and his cousin – whose legal situation is identical to his – were driving in Portland when they were intercepted by several cars owned or leased by the Department of Homeland Security. Both were taken into DHS custody and have since been at the Northwest ICE Processing Center in Tacoma, Washington. Petitioner and his cousin were given no discernable reason by DHS officials as to why they were being detained when they had no criminal history, had been paroled legally into the United States, and had pending applications for permanent residency that are eminently approvable.

20. On November 3, 2025, the DHS Office of the Principal Legal Advisor (“OPLA”) filed a Notice to Appear against Petitioner, charging him as being removable from the United States.

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

21. The Court must grant a 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 OSC is issued, the Court requires that Respondents file a return “within three days unless for good cause for additional time, not exceeding twenty days, is allowed.” *Id.*

22. 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 of England, 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).

23. Petitioner is “in custody” for the purpose of § 2241 because he is currently detained at the Northwest Detention Center. “[T]he Supreme Court has repeatedly held that the in-custody requirement [of 28 U.S.C. § 2241] is met where the Government restricts a petitioner’s freedom of action or movement,” including through an immigration order of supervision. *See Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), *citing Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see also, e.g., Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez v. Holder*, 454 F. App’x 769, 772-72 (11th Cir. 2011) (same).

LEGAL FRAMEWORK

24. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution.

25. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).

26. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.

27. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

28. Custody determinations for “arriving aliens” in § 1229a removal proceedings are governed by 8 U.S.C. § 1225. Under § 1225(b)(1)(iv), such aliens are subject to mandatory detention. However, the DHS has the authority to parole such persons from custody, as it regularly does under 8 C.F.R. § 212.5(a)-(c) (*see also* 8 U.S.C. § 1182(d)(5)).

29. The regulation referenced at ¶ 28 provides that an alien who presents neither a security risk nor a risk of absconding may be paroled if their “continued detention is not in the public interest as determined by [DHS officials]”. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Here, Petitioner was (a) lawfully paroled into the United States, (b) properly filed an application to register his permanent residence, and (c) has had no criminal arrests or incidents giving rise to the notion that he is a danger to his community. Although he overstayed his period of parole, by that time he had properly filled an application to adjust his status to lawful permanent resident. *See* Public Law 96-422 (Oct. 10, 1980) (referring to Cuban nationals as being paroled in a “special status”).

30. For nearly one year, Petitioner has been waiting for the adjudication of Form I-485, which USCIS exercises exclusive jurisdiction over. *See* 8 C.F.R. § 245.2(a)(1), 1245(a)(1)(ii); *Matter of Martinez-Montalovo*, 24 I&N Dec. 778 (BIA 2009) (confirming EOIR CAA jurisdiction only for Cuban nationals admitted to the United States on a grant of advance parole to pursue a previously filed application). He cannot pursue this form or relief through an immigration court, and detained courts such as that in Tacoma are designed for the expedited

removal of noncitizens. If Petitioner is released from custody, there is little risk of him absconding from ICE as he has a lawful and likely path toward permanent immigration status.

31. The Department of Homeland Security has not offered any form of explanation as to why Petitioner's continued detention or removal from the United States is in the "continued interest of the United States." The agency has apparently not conducted a "case-by-case determination" regarding his custodial status, as it is required to by regulation.

32. A writ of habeas corpus is especially necessary in this case because, as an "arriving alien," Petitioner is statutorily ineligible for receive a bond through an immigration judge.

33. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the DHS may take that person back into custody by revoking their release when the facts and circumstances warrant it.

34. Revocation and a return to custody are authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) – Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

35. Petitioner restates and realleges all paragraphs as if fully set forth here.

36. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

37. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

38. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

39. By categorically revoking Petitioner’s freedom and bringing him into federal custody, without consideration of his individualized facts and circumstances, Respondents have violated the APA.

40. By continuing to detain Petitioner, Respondents have further abused their discretion as there have been no changes to his facts or circumstances since the agency made its initial custody determination supporting the revocation of his release from custody.

41. Respondents have already considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community. The DHS itself granted him humanitarian parole and authorized his travel to the United States. There have been no changes to the facts that justify this revocation of freedom. The fact that Petitioner has already been permitted to live in the United States – under the same facts and circumstances which existed in

November of 2023 – shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) – Not in Accordance with Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

42. Petitioner restates and realleges all paragraphs as if fully set forth here.

43. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

44. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke . . . parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”

45. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

46. Respondents have revoked Petitioner's ability to live freely in the United States because of a categorical policy prepared by and implemented by government officials in Washington D.C., not by the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.

47. Respondents' detention of Petitioner is not in accordance with law and exceeds their statutory authority.

COUNT THREE
Violation of Fifth Amendment Right to Procedural Due Process

48. Petitioner restates and realleges all paragraphs as if fully set forth here.

49. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

50. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

51. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custodial decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *Zadvydas*, 533 U.S. at 698.

52. The revocation of Petitioner's ability to live freely in the United States, while his application to register permanent residence is pending, was done in an arbitrary manner, not based on a rational and individualized determination of whether he is a safety or flight risk, and

is a violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release would violate his right to procedural due process.

COUNT FOUR
Violation of the Fifth Amendment Right to Counsel

53. Upon information and belief, the Department of Homeland Security intends to move Respondent to an immigration detention facility in Louisiana.

54. On Sunday, November 9, 2025, Respondent was woken up in the early morning hours, driven to Boeing Field, and was only not flown to Louisiana because the plane he was intending to board had reached its capacity.

55. The constitutional right to counsel includes the ability to communicate effectively with one's attorney and to prepare a defense. 8 U.S.C. § 1362; *Usubakunov v. Gonzales*, 16 F.4th 1299, 1304-1305 (9th Cir. 2021); *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018).

56. The Ninth Circuit has found that transferring detainees to remote locations without notifying their attorney or providing access to legal representation is a violation of the right to counsel. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565-66 (9th Cir. 1990); *see also Innovation Law Lab v. Nielsen*, 342 F.Supp.3d 1067, 1080 (D. Or. 2018).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 1) Assume jurisdiction over this matter;
- 2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

- 3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- 4) Declare that Petitioner's current detention was made in violation of statute and regulation;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- 6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- 7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 8) Grant any further relief this Court deems just and proper.

Dated: November 11, 2025.

s/ Benjamin Cornell

BENJAMIN CORNELL, WSB #49533
Ascent Legal, PLLC
5401 South Tacoma Way, Office 13
Tacoma, WA 98409
Office: (253) 300-6918
ben@ascentlegal.net

Attorney for Petitioner

VERIFICATION OF PETITIONER

On behalf of Rey Enrique Diaz de Armas, the party in custody, I verify the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief and having reviewed the relevant records and pleadings. Mr. Diaz de Armas has not verified the petition himself because he is currently held in ICE detention

November 11, 2025

Date

s/ Benjamin Cornell

Benjamin Cornell, WSBA 49553

CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

US Attorneys
Email: usawaw.habeas@usdoj.gov

Dated: November 11, 2025

s/ Benjamin Cornell
Benjamin Cornell, WSBA 49553