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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

Jose A. FRANCO,

Petitioner,

v.

Case No.:

3:26-CV-15-WWB-SJH

WARDEN, BAKER COUNTY DETENTION CENTER;
ICE FIELD OFFICE DIRECTOR, MIAMI;
SECRETARY, DEPARTMENT OF HOMELAND SECURITY;
ATTORNEY GENERAL OF THE UNITED STATES,

Respondents.

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

Petitioner respectfully states:

I. JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal immigration custody within this District.
2. Petitioner challenges only the lawfulness of continued detention, not the validity of the underlying removal order.
3. This Petition is filed by Maria C. Rivas, as next friend with Petitioner's knowledge and authorization because Petitioner is detained and has limited access to the Court.

II. PARTIES

4. Petitioner is a native and citizen of Cuba currently detained by ICE at Baker County Detention Center, 20706 US 90 W, Sanderson, Florida 32087.
5. Respondents are the federal officials exercising custody over Petitioner.

III. FACTUAL BACKGROUND

6. Petitioner entered the United States from Cuba under Diversity Immigrant Visa (DV) Program. He has lived in the United States since he was 15 years old.
7. Petitioner lost his immigration status due to a criminal conviction.
8. Petitioner completed all criminal penalties imposed by the criminal court.
9. Upon release, Petitioner was immediately detained by ICE but released under an Order of Supervision.
10. After being released from ICE, Petitioner lived in the community for multiple years without any additional criminal incidents. Petitioner complied with all probational requirements following his sentence. Petitioner poses no danger to the community and is not a flight risk.
11. Petitioner consistently complied with ICE supervision, including annual check-ins, and always maintained a known address.
12. Petitioner never missed a check-in, never absconded, and fully followed all conditions of supervision.
13. Petitioner is not alleged to have committed any new crimes or violated any condition of supervision.
14. Despite full compliance and no change in circumstances, ICE re-detained Petitioner abruptly on October 25, 2025, with no explanation of change of circumstance or pre-deprivation hearing separating him from his loved ones.
15. Petitioner is a father and main provider of 2 children under the age of 4. His son has severe autism and is non-verbal. Petitioner missed his daughter's 3rd birthday while being in detention, thanksgiving, and Christmas causing irreparable harm, distress, and trauma to his children.

16. While being detained, Petitioner and other detainees suffered under deplorable conditions including limited medical access, suitable places to sleep, extremely cold temperatures, flooding from rain, bathroom floods exposing detainees to floating feces and sewer waste. Petitioner and other detainees have gone prolonged hours without food or bathroom access. Petitioner and other detainees were excessively sprayed with pepper spray causing Petitioner to need immediate medical intervention along with other detainees many of whom fainted and suffered multiple injuries caused by this incident. They were denied access to communicate with their family members or attorneys for 3 days following this incident. Petitioner's health continues to decline due to the conditions and has lost over 20 lbs. These conditions are described solely to demonstrate irreparable harm resulting from continued unlawful detention and are not asserted as a separate conditions-of-confinement claim.
17. Petitioner is subject to a final order of removal.
18. Regardless of the statutory removal period, Petitioner's removal is not reasonably foreseeable because Cuba has consistently refused repatriation.
19. ICE has been unable to secure travel documents and has provided no timeline for removal.
20. Petitioner's detention has no reasonably foreseeable end.

IV. LEGAL ARGUMENT

Although Petitioner is currently detained under 8 U.S.C. § 1231(a)(6), the principles governing re-detention without changed circumstances under § 1226(a) apply with equal force because ICE previously determined Petitioner was neither a flight risk nor a danger.

A. Indefinite Post-Removal-Order Detention Violates Due Process

21. Immigration detention is civil and may not be punitive.
22. Detention is constitutional only when it bears a reasonable relation to its purpose.
23. When removal is not reasonably foreseeable, continued detention loses its justification.
24. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that indefinite post-removal-order detention violates due process.

25. “The Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

B. 8 U.S.C. § 1231(a)(6) Does Not Authorize Indefinite Detention

26. Petitioner is detained under 8 U.S.C. § 1231(a)(6).

27. *Zadvydas* held that this statute contains an implicit temporal limitation.

28. Detention is permitted only for a period reasonably necessary to secure removal.

29. Six months is the presumptively reasonable period.

C. Removal to Cuba Is Not Reasonably Foreseeable

30. Cuba has a long-documented history of refusing repatriation.

31. ICE has no travel documents and no concrete removal plan.

32. Petitioner has shown good reason to believe removal is not reasonably foreseeable.

33. The Government cannot rebut this showing.

D. Re-Detention Without Changed Circumstances Is Arbitrary and Unlawful

34. Petitioner was previously released and complied with supervision for years.

35. Nothing about Petitioner’s circumstances has changed.

36. Re-detention without new facts is arbitrary, capricious, and unconstitutional

37. Courts have held that re-detention under such circumstances is arbitrary and unlawful.

See Fanfan v. Noem, No. 3:25-cv-03291-DMS-BJW (S.D. Cal. Dec. 12, 2025).

38. Immigration detention “has two regulatory goals: ensuring the appearance of

[noncitizens] at future immigration proceeding and preventing danger to the community.”

Zadvydas, 533 U.S. at 678 (internal citations omitted); see also 8 U.S.C. 1226(a), (b); 8

C.F.R. 1236.1(c)(8).

39. Those previously released by DHS, like Petitioners, have necessarily been deemed neither a flight risk nor a danger. 8 C.F.R. 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they “would not pose a danger to property or persons,” and are “likely to appear for any future proceeding”); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed “neither a security risk nor a risk of absconding”).
40. In cases of individuals previously released by DHS, re-detention under section 1226(a) requires an individualized determination of a material change in circumstances relating to flight risk or danger. See *Ortega*, 415 F.Supp.3d at 968 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.” (citing *Saravia*, 280 F.Supp.3d at 1197)); see also *Matter of Sugay*, 171 I&N Dec. 637, 640 (B.I.A. 1981) (“[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance.”)
41. Absent a material change in circumstances, the re-detention of noncitizens previously released by DHS violates the INA because it does not serve the purpose of the statute

E. Petitioner Is Not a Flight Risk or Danger

42. Years of compliance demonstrate Petitioner is not a flight risk.
43. Petitioner poses no danger to the community. The Government has previously decided to release a noncitizen and there is no evidence in the record of any changed circumstance that might have caused the Government to reconsider its initial decision to release the noncitizen, courts have found the Government’s interest in re-detention is low. *Doe v. Chestnut*, No. 1:25-cv-01372CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26, 2025) (citations omitted). This factor, too, weighs in favor of the Petitioner.
44. Less restrictive alternatives are sufficient.

F. Less Restrictive Alternatives Exist

45. ICE has already determined supervision is sufficient.
46. Continued detention serves no legitimate governmental purpose.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Petitioner's immediate release under reasonable conditions of supervision;
3. Alternatively, Order Respondents to show cause why Petitioner should not be released;
4. Grant any additional relief this Court deems just and proper.

Executed on January 6, 2025.

Respectfully submitted,



Maria C. Rivas

Next Friend for Petitioner

