

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:26-cv-00080

DAYAN HERNANDEZ CASTELLANO

PETITIONER,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
KRISTI NOEM, Secretary U.S. Dept. Homeland Security, in her official capacity
TODD LYONS, Director Immigration and Customs Enforcement, in his official capacity
PAMELA BONDI, U.S. Attorney General, in her official capacity
JUAN BALTASAR, Warden, Denver Contract Detention, in his official capacity,

Respondent(s).

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

INTRODUCTION

1. Petitioner Dayan Hernandez Castellano has been incarcerated since January 26, 2025 over 11 months ago. Petitioner's detention became unconstitutional six months after the removal order in his case became administratively final on June 16, 2025 because removal is not reasonably foreseeable. Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.

2. The Petitioner's removal is not reasonably foreseeable because the Petitioner is a citizen of Cuba, a country with which the United States does not have relations and could not be removed to Cuba based on a grant of Withholding of Removal. Attempts have been made to remove the Petitioner to a third country on at

least two separate occasions, but the Petitioner was not accepted by the removal country. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years.

3. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release.

JURISDICTION

4. Petitioner is detained in civil immigration custody at the Denver Contract Detention Facility in Aurora, Colorado. He has been detained since on or about January 26, 2025. He has not received an individualized bond hearing before an immigration judge (IJ) since the entry of his removal order. He has no criminal convictions in the United States and the charges he received in Cuba were those related to his political opinion.

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

6. 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 pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained at Aurora, Colorado, which is within the jurisdiction of this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because

Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this district, and no real property is involved in this action.

PARTIES

9. Petitioner is a citizen of Cuba, was ordered removed following proceedings under 8 U.S.C. § 1229a. He has been detained for over 11 months and is currently detained at the Denver Contract Detention Facility. He is the custody, and under the direct control, of Respondents and their agents.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is empowered to carry out any administrative order against Petitioner and is a legal custodian of Petitioner.

11. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Petitioner.

12. Respondent Merrick B. Garland is sued in his 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, he has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

13. Respondent Lyons is sued in his official capacity as the Director of U.S.

Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

14. Respondent Baltasar is the Warden of the Denver Contract Detention Facility in Aurora, Colorado, and he has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner.

STATEMENT OF FACTS

15. Petitioner is a 28-year-old citizen of Cuba. In Cuba, the Petitioner participated in both physical and virtual protests of the Cuban government. The Petitioner was identified by the Cuban government as one who opposes the government, and was cited or arrested on several occasions for the inciting of protests and threatened with imprisonment based on his political opinion.

Proceedings Before the Immigration Court

16. Petitioner entered the United States around January 14, 2024 near Hidalgo, Texas. A Credible Fear Interview was conducted and the officer found that Petitioner had a credible fear of torture if returned to Cuba. He was released on Conditional Parole under INA § 236 (Recognizance) around January 22, 2024. Petitioner filed an Application for Asylum, Withholding of Removal, a Protection Under the Convention Against Torture, Form I-589, on March 25, 2024. Petitioner was scheduled for an initial hearing before the Immigration Judge on October 22, 2025.

17. On January 26, 2025, Petitioner was attending what he believed to be a party when he was detained by ICE officers while they executed a search warrant on the premises. He was processed and housed at the Denver Contract Detention Facility

in Aurora, Colorado. No criminal charges were filed against Petitioner, nor did the Petitioner have any criminal history.

18. DHS moved to have the Petitioner's removal proceedings transferred to the Aurora Immigration Court. The motion was granted and the Petitioner proceeded with his removal proceedings while detained. Petitioner attended his Individual Hearing with counsel on June 10, 2025 and testified as to the persecution he suffered in Cuba.

19. On June 16, 2025, the IJ issued an order finding that the Petitioner was ineligible for asylum under the Circumvention of Lawful Pathways Rule. However, the IJ found that the Petitioner had established that it was more likely than not that he would be persecuted on account of his political opinion if returned to his home country of Cuba and granted Withholding of Removal under INA § 241(b)(3). Petitioner did not appeal.

20. The Petitioner has remained in detention since that time. On two occasions, the Petitioner was transferred from Colorado to another facility in Arizona and told he was being removed to Mexico. Petitioner was not removed and was subsequently returned to Colorado on both occasions. Respondent's counsel was not advised of either transfer by DHS and was not present during the Petitioner's time at the Arizona facility.

LEGAL FRAMEWORK

21. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." 28 U.S.C. § 2243 (emphasis added).

22. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “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).

23. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.”). It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

24. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he date the order of removal becomes administratively final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.”

25. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that “the statute, 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. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

26. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained for longer than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if 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.*

27. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

28. The first justification of preventing flight, however, is "by definition . . . weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention

justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

29. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should consider the risk of the [noncitizen’s] committing further crimes as a factor potentially justifying the confinement within that reasonable removal period.” *Id.* at 700.

30. At a minimum, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. See *Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); see also *Clark v. Martinez*, 543 U.S. 371, 386 (2005).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

31. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

32. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

33. The Petitioner has been detained by Respondents for over 11 months. Over six months of this prolonged detention has taken place *after* his removal period began.

34. Petitioner’s removal order became administratively final on June 16, 2025. The removal period began on that day and thus elapsed on December 13, 2025.

35. Petitioner’s prolonged detention is not likely to end in the reasonably foreseeable future. Petitioner is a citizen of Cuba, a country with which the United States does not have relations and could not be removed to Cuba based on a grant of Withholding of Removal. Attempts have been made to remove the Petitioner to a third country on at least two separate occasions, but the Petitioner was not accepted by the removal country. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

36. For these reasons, Petitioner’s ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Violation of 8 U.S.C. § 1231(a)

37. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

38. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention “beyond the removal period” only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Petitioner’s removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Declare that Petitioner’s ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (4) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (5) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Jason M. Turner

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Certificate of AI

The undersigned counsel certifies that generative artificial intelligence was not used to draft this filing.

/s/ Jason M. Turner