

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JAN 15 2026

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**UNITED STATES DISTRICT COURT**

JEFFREY P. COLWELL  
CLERK

for the

District of  
COLORADO

Eduardo Hernández Dehuela  
Petitioner

TODD M. LYONS, Acting Director ICE  
Robert S. Gadian, Field Director Denver Off.  
Juan Baltazar, Warden  
Respondent  
(name of warden or authorized person having custody of petitioner)

Case No. \_\_\_\_\_  
(Supplied by Clerk of Court)

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

**Personal Information**

- (a) Your full name: Eduardo Hernández Dehuela  
(b) Other names you have used: \_\_\_\_\_
- Place of confinement:  
(a) Name of institution: Aurora ICE Processing Center  
(b) Address: 3130 Oakland North Street  
Aurora, CO 80010  
(c) Your identification number: A# [REDACTED]
- Are you currently being held on orders by:  
 Federal authorities     State authorities     Other - explain: \_\_\_\_\_
- Are you currently:  
 A pretrial detainee (waiting for trial on criminal charges)  
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: \_\_\_\_\_  
(b) Docket number of criminal case: \_\_\_\_\_  
(c) Date of sentencing: \_\_\_\_\_  
 Being held on an immigration charge  
 Other (explain): \_\_\_\_\_

**Decision or Action You Are Challenging**

- What are you challenging in this petition:  
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain): \_\_\_\_\_

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: Aurora ICE Processing Center  
3130 Oakland North Street, Aurora, CO 80010
- (b) Docket number, case number, or opinion number: \_\_\_\_\_
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
Being held into Immigration Custody for 107 days  
without the 90 days review which should take place on 12/8/2025  
in order to consider release on an order of supervision.
- (d) Date of the decision or action: Notice to Alien of file Custody Review on 11/25/2025  
see Attach

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes
- No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Docket number, case number, or opinion number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: N/A

(b) If you answered "No," explain why you did not appeal:

This Habeas Corpus is my first legal action

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- Yes
- No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

N/A

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes  No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

N/A

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes  No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes  No

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If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: NIA

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: NIA

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

NIA

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes  No

If "Yes," provide:

- (a) Date you were taken into immigration custody: September 10, 2025
- (b) Date of the removal or reinstatement order: September 15, 2014
- (c) Did you file an appeal with the Board of Immigration Appeals?

Yes  No

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If "Yes," provide:

- (1) Date of filing: NIA
- (2) Case number: \_\_\_\_\_
- (3) Result: \_\_\_\_\_
- (4) Date of result: \_\_\_\_\_
- (5) Issues raised: \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

Yes  No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Case number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

NIA

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes  No

If "Yes," provide:

- (a) Kind of petition, motion, or application: \_\_\_\_\_
- (b) Name of the authority, agency, or court: \_\_\_\_\_
- (c) Date of filing: \_\_\_\_\_
- (d) Docket number, case number, or opinion number: \_\_\_\_\_
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_
- (g) Issues raised: NIA

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Grounds for Your Challenge in This Petition

- 13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: I am a Cuban Citizen DOB: [redacted] who enter into U.S. on 08/23/2004 via I-94 Parole. I was arrested by the Miami Dade Police for growing marijuana in a private house. I was convicted to 3 years in Prison. I had an Immigration hold. I went to Krome PC

(a) Supporting facts (Be brief. Do not cite cases or law.):

I was in Prison since 09/2013 to 2016. After being released from prison, I was transferred to Krome Detention Center to be processed and deported. After 90 days I was released on supervision without ankle monitor. Reporting to ICE every 6 months. On September 10 2025 when reporting to ICE, I was arrested again.

(b) Did you present Ground One in all appeals that were available to you?

Yes  No

GROUND TWO: I have been in ICE custody for 120 days (01/08/2026) I was arrested in Colorado when I went to report on 09/10/2025. And I was told that I was going to be deported to Cuba even though Cuba is not accepting me. I was never served with a document at all.

(a) Supporting facts (Be brief. Do not cite cases or law.):

ICE knew that Cuba is not accepting me since 2017 when I was in ICE custody for 90 days. There is not a deportation in a foreseeable future.

(b) Did you present Ground Two in all appeals that were available to you?

Yes  No

GROUND THREE: I have not violate the supervision conditions and to the best of my knowledge there is not any new law that justify the arrest other than a courtment order to arrest all immigrants with record criminal non-citizen.

(a) Supporting facts (Be brief. Do not cite cases or law.):

After being in U.S.A for 1 year and 1 day, I applied to become a permanent resident based on the Act of Cuban Status adjustment. 3 months later (11/2005) I received the Green Card.

(b) Did you present Ground Three in all appeals that were available to you?

Yes  No

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**GROUND FOUR:** I am not a risks of flight at all. I have my family in US. I live with my wife of 35 years, my children, two girls and one boy. My wife is a permanent resident and my mother (85 y/o sick and children are US A citizen.

(a) Supporting facts (Be brief. Do not cite cases or law.):

I do not have any relatives in other country. I have no reason to flight away if released. I am not a danger to society/community. I live in home and work hard to support my family. Since released from prison in 2016-2017 I have no any problem or committed any crimes.

(b) Did you present Ground Four in all appeals that were available to you?

Yes  No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Request for Relief**

15. State exactly what you want the court to do: To ask the defendants to show cause why the court will not granted me the Habeas Corpus. Also I request that the court preclude ICE to transfer me out of the Colorado jurisdiction pending the petition resolution. If ICE fail to show cause, I request immediate release from custody.

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**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

01/12/2025

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 01/08/2026



\_\_\_\_\_  
*Signature of Petitioner*

\_\_\_\_\_  
*Signature of Attorney or other authorized person, if any*

Print

Save As...

Reset

Enforcement and Removal Operations  
Denver Field Office

U.S. Department of Homeland Security  
12445 East Caley Ave  
Centennial, CO 80111



U.S. Immigration  
and Customs  
Enforcement

A2-103/2

Mr. Edelberto Hernandez-Orihuela



C/O GEO CDF  
3130 North Oakland St.  
Aurora, CO 80010

### Notice to Alien of File Custody Review \*

You are detained in the custody of U.S. Immigration and Customs Enforcement (ICE) and you are required to cooperate with ICE in effecting your removal from the United States. If ICE has not removed you from the United States within the removal period as set forth in INA 241(a) (normally 90-days of either: 1) your entering ICE custody with a final order of removal, deportation or exclusion, or 2) the date of any final order you receive while you are in ICE custody), ICE's Deciding Official will review your case for consideration of release on an Order of Supervision. Release, however, is dependent on your demonstrating to the satisfaction of the Attorney General that you **will not** pose a danger to the community and **will not** present a flight risk.

Your custody status will be reviewed on or about: 12/08/2025. The Deciding Official may consider, but is not limited to considering the following:

1. Criminal convictions and criminal conduct;
2. Other criminal and immigration history;
3. Sentence(s) imposed and time actually served;
4. History of escapes, failures to appear for judicial or other proceedings, and other defaults;
5. Probation history;
6. Disciplinary problems while incarcerated;
7. Evidence of rehabilitative effort or recidivism;
8. Equities in the United States;
9. Cooperation in obtaining your travel document.
10. Any available mental health reports.

You may submit any documentation you wish to be reviewed in support of your release, prior to the date listed above, to the attention of the Officer and address below. English translations must be provided pursuant to 8 CFR 103.2(b)(3). An attorney or other person may submit materials on your behalf. The deciding official will notify you of the decision in your case. Attached to this notice is a list of free or low cost legal representatives who may be able to provide assistance to you in preparing your case.

\* I never received the result of the 90 days review in order to know the reason for continue in custody

*Enforcement and Removal Operations  
Denver Field Office*

**U.S. Department of Homeland Security**  
12445 East Caley Ave  
Centennial, CO 80111



**U.S. Immigration  
and Customs  
Enforcement**

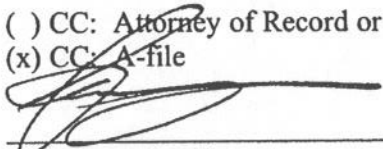
U.S. Department of Homeland Security  
**Immigration and Customs Enforcement**  
Attn: J. Manacop, Deportation Officer  
3130 North Oakland St.  
Aurora, CO 80010

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**METHOD OF SERVICE**

I certify that this form was provided to the alien by:      Hand                      Institution Mail

( ) CC: Attorney of Record or Designated Representative  
(x) CC: A-file

  
\_\_\_\_\_  
Signature of Officer

J. Manacop, DO  
Print Name of Officer

11/25/2025  
Date

**U.S. Department of Homeland Security**  
**Immigration and Customs Enforcement**

**Warning for Failure to Depart**


<b>Name:</b> HERNANDEZ-ORIHUELA, EDELBERTO		<b>Field Office:</b> DVS-T	<b>File #:</b> 
Section 243(a) of the Immigration and Nationality Act provides, in part, that:  Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 237(a) who-- (A) willfully fails or refuses to depart from the United States within a period of 90 days* from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court, (B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure, (C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or (D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order, shall be fined under title 18, United States Code, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 237(a)), or both.  Nothing in this section shall make it a violation to take proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody.  Any action Immigration and Customs Enforcement may take to obtain a travel document for your departure or to remove you will <b>NOT</b> relieve you of the liability for compliance with the provisions of law referred to in the first paragraph above.  * Section 241(a)(1)(C) provides for the extension of the statutory removal period if the alien refuses, during the removal period, to make application in good faith, for a travel or other document necessary for the alien's removal or departure or conspires or acts to prevent the alien's removal subject to an order of removal.			
<b>Date Order Final:</b> September 15, 2014		<b>Ordered Removed under Section:</b> 237a2Aii, 237a2Aiii	
<b>Record of Service</b> (Check method used)			
<input type="checkbox"/> <b>Record of Personal Service</b>			
<b>Served By: (Print Name and Title of Officer)</b> JASPER MANACOP, Deportation Officer		<b>Date:</b> November 25, 2025	
<b>Officer's Signature:</b> 		<b>Location of Service:</b> Aurora, Colorado	
<b>Served On: (Alien's Signature)</b> <i>Serves via detainer mail</i>		<b>Date:</b> November 25, 2025	
<input type="checkbox"/> <b>Warning administered in Court</b> (Copy of order attached)			<b>Record of Personal Service (Cont.)</b>
<input checked="" type="checkbox"/> <b>Certified Mail Service</b>			<b>Fingerprint of Alien (Specify finger used)</b>
Institutional Mail  Attach certified mail receipts here.			 RIGHT INDEX

### INSTRUCTION SHEET TO DETAINEE REGARDING REQUIREMENT TO ASSIST IN REMOVAL

The following is a list of things you are required to complete within 30 days of receiving this form, in order comply with your obligation to assist in obtaining a travel document:

*Mandatory requirements will be checked off by the ICE officer depending on the facts of each case. Failure to comply or provide sufficient evidence of your inability to comply, may result in the extension of the removal period and subject you to further detention. In addition, you may be subject to criminal prosecution. If you need assistance in complying with any of the requirements, please contact a Deportation Officer.*

- Submit passports (current and expired) to ICE. If you have a copy of your passport, you are to submit it.
- Apply for a travel document/passport from your embassy or consulate, or directly from your government in your native country, or any other embassy or consulate of your native country in another country.
- Comply with all instructions from all embassies or consulates requiring completion of documentation for issuance of a travel document.
- Submit to ICE birth certificates, national identification cards, and any other document issued by a foreign government indicating your citizenship, nationality, place of birth, and place of residence prior to entering the United States.
- Provide names and addresses of family and friends residing in the United States and request that they contact your embassy or consulate in the United States, in order to facilitate the issuance of a travel document.
- Provide names and addresses of family and friends residing in your country of citizenship and request family and friends residing abroad contact your government in reference to issuing a travel document.
- You are required to take measures to request reinstatement of your previous nationality, register as required, or take any other action that will ensure the issuance of a travel document and your removal from the United States.
- Provide ICE with written copies of requests to embassies or consulates requesting issuance of a travel document.
- Provide ICE with written copies of responses from embassies or consulates regarding your requests.
- Solicit permission from another country, which may be able to accept you, to enter that country to affect your removal from the United States.
- Provide your true and correct name and date of birth and any other identities you have ever used.
- Other: \_\_\_\_\_

Alien's Signature Sonal Vira datarino mad A Number 

Served by JASPER MANACOP on November 25, 2025 at DVS-T  
Officer's Name Date Location

To be served with I-229 (a) no later than 30 days after the final order



U.S. Immigration and Customs Enforcement

RECORD OF PERSONAL INTERVIEW

Subject Name: HERNANDEZ-Orihuela, Edelberto

A# [REDACTED]

Reviewer #1: K. Benner

Date: 12/09/2025

Reviewer #2: J. Mansur

Date: 12/09/2025

Pursuant to 8 CFR 241.4(i)(3), this personal interview is being conducted on behalf of Immigration and Customs Enforcement Headquarters Custody Management Unit. Information provided in this interview will be considered upon review of your detention status.

Q: Are you willing to participate in this interview?

A: "Yes."

|

Q: Do you have a birth certificate, voter registration card, certificate of baptism, cedula, national identity card, military identification card, passport or travel document?

A: "No."

|

Q: If yes, where are those documents?

A: N/A

|

Q: If the documents are not in the possession of ICE, why have you not provided them?

A: N/A

|

Q: What have you done to assist ICE in obtaining a travel document for your return to your country of citizenship?

A: "I have been helping with whatever ICE needs."

|

Q: Do you have any family in the United States? If yes, please provide their names, relationship to you and their contact information.

A: "I have my daughters and wife who are here.

Wife: Daisy Hernandez

Daughter: [REDACTED] Hernandez

Daughter: [REDACTED] Hernandez

[REDACTED] lives in Miami and [REDACTED] lives with Melony here in Colorado." |



**U.S. Immigration  
and Customs  
Enforcement**

Q: Do you have any family in your country of citizenship? If yes, please provide contact information.

A: "I don't have any family in Cuba, all my family is here already."

Q: In your opinion, do you have any ties to your local community? Please explain.

A: "Yes, I go to church every Sunday with my family."

Q: Do you have a place to live in the United States? If so, where and with whom (provide contact information)?

A: "With my wife and daughter here in Colorado, located at [REDACTED] Colorado Springs 80907."

Q: Do you have any non-government organizations (NGOs) that are willing to assist you if you were released? If so, what organization? Do you have the organization's contact information?

A: "I would only get help or assistance from my church, however I don't know the church's name only my wife does."

Q: Do you have any employment prospects? If so, where and who can confirm the information?

A: "I worked as a mechanic at a tire shop."

Q: What is your criminal history?

A: "I was in prison for credit card fraud and marijuana possession."

Q: Please describe any incidents where you were subject to sanctions for violating facility rules or regulations while you were incarcerated in State, local or ICE custody.

A: "I have never had any problems here, I always obey the GEO guards."



**U.S. Immigration  
and Customs  
Enforcement**

Q. What efforts did you make to rehabilitate yourself while you were incarcerated?

A: "I have put a request to work here but they haven't gotten back to me yet. Other than that, I spend my time in the library reading books and learning."

Q: Have you ever failed to appear for any judicial proceedings; failed to appear as directed by a law enforcement entity; or have any history of escapes?

A: "I have always been able to sign or attend anything asked of me."

Q: Do you have any Parole or Probation Requirements? If so, with who and for how long?

A: "I had parole but it ended on November 20<sup>th</sup> of this year but I'm not sure what happened to it after that."

|

Q. Do you have any information to submit to the Review Panel that you believe provides a basis for your release?

A: "My wife is working on getting recommendation letters from neighbors, friends and previous employers, I will get them to you as soon as possible."

This interview was conducted in the \_\_\_\_\_ language.  
Interpreter information: \_Samantha 3740 Reference: 42110372 |

I have read (or had read to me) the foregoing statement, consisting of [3] pages. I state that the answers made therein by me are true and correct to the best of my knowledge and belief and that statement is a full, true, and correct record of my interview on the date indicated by the above named officer of the US Immigration and Customs Enforcement. I have initialed each page of this statement (and the correction(s) noted on page(s) [\_\_\_\_].)


**Alien Signature:** \_\_\_\_\_

**Reviewer #1 Signature:** \_\_\_\_\_

**Reviewer #2 Signature:** \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF PETITION OF WRIT OF HABEAS  
CORPUS PURSUANT TO 28 U.S.C. § 2241**

Name: Edelberto Hernandez Orihuela

Alien Registration No. 

Pro Se Petitioner-Detained

Detention Center: Aurora ICE Processing Center

Address: 3130 Oakland North Street  
Aurora, CO 80010

INTRODUCTION

1. Petitioner, Eduardo Hernandez Dinhuela petitions this Court for a Writ of Habeas Corpus to remedy Petitioner's indefinite detention by Respondents. Petitioner submits this Memorandum of Law in Support of the Petition for a Writ of Habeas Corpus.
2. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), noncitizens cannot be detained indefinitely if the government is unable to carry out their removal. Instead, detention after a final order of removal is authorized only when removal is reasonably foreseeable. As a guide to courts, the Court in *Zadvydas* established a presumption that detention after a final order of removal was permissible for six months. Detention after a final order may be unlawful even when six months have not passed, particularly if it is clear that the United States will not be able to effect a noncitizens's removal. But after that six months period, once a noncitizen provides "good reason to believe that there is not significant likelihood of removal in he reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." And the longer a noncitizen has been detained, the stronger the government's showing must be.
3. Petitioner is entitled to release under the framework of *Zadvydas* unless the government promptly demonstrate that there is a significant likelihood of removal in the reasonably foreseeable future.
4. Petitioner respectfully request that the Court use its authority under 28 U.S.C. § 2243 To order the Respondents to file a return within three days, unless they can show good cause

for additional time. See 20 U.S.C. § 2243 (stating that an Order to Show Cause why a petition for a Writ of Habeas Corpus should be denied is returnable “within three days unless for good cause additional time, not exceeding twenty days, is allowed”).

- 5. In order to permit full judicial review of the claim herein and requested relief, Petitioner respectfully requests that the Court orders Respondents not to transfer Petitioner outside the jurisdiction of this Court pending considerations of this petition.

**STATEMENTS OF FACTS**

- 6. Petitioner was born in: Cuba
- 7. Petitioner entered the United States on or about: 08/23/2004
- 8. An Immigration Judge ordered Petitioner removed from the United States on or about: 09/15/2014
- 9. Regarding Appeals: I am filing an Habeas Corpus  
N/A
- 10. Petitioner has cooperated fully with all of ICE’s efforts to remove Petitioner. Petitioner has cooperated with ICE in the following ways: \_\_\_\_\_  
N/A

11. Nonetheless, ICE has been unable to remove Petitioner from the United States. ICE is unlikely to remove Petitioner in the reasonably foreseeable future because: \_\_\_\_\_

Cuba is not accepting me. There is not a 3<sup>rd</sup> country which is legally accepting me. ICE has been deporting Cuban immigrants to Mexico through the border without any legal status (undocumented)

12. Regarding Petitioner Detention: On January 12, 2025 I have been detained for 124 days.

13. If release, Petitioner will be supported by family and friends in the United States. In particular: my wife of 35 years (Permanent Resident) and my children who are US citizens.

**ARGUMENT**

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA") §§ 101-507, 8 U.S.C. § 1101-1537, amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-1570.

15. This Court has jurisdiction under 28 U.S.C. § 2241, The Suspension Clause, U.S. Const. Art. 1 § 9, cl 2, and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and Petitioner's custody is in violation of the Constitution, laws, or treaties of the United States. *See Zadvydas*, 566 U.S. 678. This Court may grant relief under 28 U.S.C. § 2241 (Habeas Corpus), 5 U.S.C. § 702 (establishing the right of review for a person suffering a legal wrong due to agency action), and 28 U.S.C. § 1651 (All Writs Act).
16. The Due Process Clause applies to all persons in the United States, "whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the Supreme Court emphasized, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical lies at the heart of the liberty that [the Due Process] Clause protects." 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Court noted, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem," *Id.*; *see also Plyer v. Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments").
17. Under 8 U.S.C. § 1231(a)(2), noncitizens subject to final orders of removal "shall" be detained during the first 90 days—the "removal period"—and they "shall" be removed during that period under § 1231(a)(1). Under 8 U.S.C. § 1231(a)(6), the government "may" continue detention beyond the 90-days removal period if a noncitizen falls within certain broad categories of removability or is determined "to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

18. In *Zadvydas*, the Supreme Court construed 8 U.S.C. § 1231(a)(6) to authorize detention only where it is significantly likely that removal will occur in the reasonably foreseeable future, in order to avoid the serious due process concerns that would be presented by permitting detention for an indefinite period of time. *Zadvydas*, 533 U.S. at CITE. After a noncitizen meets his or her initial burden to show that no such likelihood of removal exists, the burden shifts to the government to “respond with evidence sufficient to rebut [the alien] showing,” *Id.* At 701.
19. Courts have rejected conclusory claims by ICE agents which claim, without submitting concrete factual information about scheduled flights or repatriation agreements, that removal is imminent. “[A] theoretical possibility of eventually being removed does not satisfy the government’s burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future.” *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at \*5 (W.D. La. Sept. 17, 2020) (internal quotation and citation omitted). “[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, [a] Court certainly cannot conclude that [a] removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Id.* at \*5 (internal quotation marks and citation omitted). *See also, Gomez Barco v. Witte*, No. 6:20-CV-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not be able to secure necessary travel document, noting that the ICE officer “clearly has no factual basis for his ‘belief’ that there is not foreseeable impediment of Petitioner’s removal or that her removal is imminent,” and that there was not foundation for the “expectation” that the COVID-19 related travel restrictions in place would soon be lifted); *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La.

Oct. 14, 2020) (same).<sup>1</sup> In granting Ms. Balza's release, the Court considered and rejected a conclusory declaration by a local ICE Assistant Field Officer that removal was imminent. *Id.* at \*5. In *Alexis v. Smith*, the Petitioner, Mr. Alexis, had been in detention for almost a year and subject to a removal order for over a year. An ICE official testified to an informal agreement that permitted removals but acknowledged that there were far fewer removals to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with identity documents and it was unknown when that would be resolved. The magistrate did not credit ICE's vague statements that it was "endeavoring to rectify the issue" and conclude there was no end in sight for detention, and recommended release. The District Court Judge agreed and ordered release. ICE then released Mr. Alexis on an Order of Supervised release and moved to get the judgment vacated on mootness, which it was. However, this does not invalidate the reasoning and conclusions of the Magistrate Judge and District Court Judge on this subject, and this case is still informative and persuasive to the body of law on this subject. *Alexis v. Smith*, No. CIV.A. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) report and recommendations adopted. No. CIV.A. 11-0309, 2011 WL 3954945 (W.D. La. Sept. 6, 2011), vacated. No. CV 11-0309, 2011 WL 13386020 (W.D. La. Sept. 15, 2011).

20. Courts in this Districts have—pursuant to *Zadvydas*—released individuals who have been detained for over six months. *See, e.g. Gomez Barco*, 2020 WL 7393786 (ordering released of an immigrant detained who was a native and citizen of Venezuela who was

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<sup>1</sup> Other districts courts in the Fifth Circuit and Elsewhere have similarly granted Habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. *See, e.g., Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting habeas relief to petitioner detained for approximately sixteen months due to a lack of diplomatic relations with Venezuela); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3D 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); *Saharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond a travel document request for more than seven months).

detained longer than six month because ICE had not been able to secure necessary travel documents); *Balza*, 2020 WL 6143643, at \*5 (ordering release of petitioner and nothing that “[a]fter more than a year of detention, Petitioner’s removal need not necessarily be imminent, but it cannot be speculative”) (internal quotation marks omitted).

21. Under *Zadvydas*, courts have found that there is no significant likelihood of removal and granted relief where:

- No country will accept the petitioner. *See, e.g. Jabir v. Ashcroft*, No. 03-2480, 2004 WL 60318 (E.D. La. Jan. 8, 2004) (granting habeas relief to petitioner detained for more than fourteen months after numerous countries refused to repatriate the petitioner).<sup>2</sup>
- The Petitioner’s country of origin refuses to issue a travel document, *See. e.g., Alexis v. Smith*, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) (granting habeas release to petitioner detained for approximately one year due to the Haitian government rejecting the quality of identity documents provided); *Fermine v. Dir. Of Immigr. Custom Enf’t*, No. 2:06-cv-1578, 2007 WL 2284606 (W.D. La. May 23, 2007) (granting habeas relief to petitioner detained for fifteen months due to Trinidad’s refusal to issue travel documents); *Lijadu v. Gonzales*, No. 06-1208, 2006 WL 3933850 (W.D. La. Dec. 18, 2006) (granting habeas relief to petitioner detained nineteen months because Nigeria refused to issue travel documents due to petitioner’s HIV status).<sup>3</sup>

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<sup>2</sup> *See also Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at \*4 (W.D.N.Y. Jan. 2, 2019) (ordering release of petitioner detained fourteen months after petitioner showed “that the countries with he has any affiliation will not accept him”), *Yusupov v. Love*, No. 4:CV-06-1804, 2007 WL 5063231 (M.D. Pa. Jan. 12, 2007); *Abel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418 (M.D. Pa. 2004) (ordering release of petitioner detained approximately two years after refusal of several countries to accept petitioner).

<sup>3</sup> *See also Ka v. Bureau of Immigr. & Custom Enf’t*, No. B-07-197, 2008 WL 11462867, at \*8 (S.D. Tex. June 24, 2008) (ordering release of petitioner detained twelve months after Senegal “refuses to issue Ka a travel document because he d[id] not have proper identity documentation”); *Moreira v. Gonzales*, No. CIV05-588 A, 2006 WL 3861972 (W.D. La. Nov. 2, 2006) (granting habeas relief to petitioner detained for three years because Cape Verde advised that it would not accept the petitioner for repatriation); *Khan v. Gonzales*, 481 F. Supp. 2d 638 (W.D. Tex. 2006).

- There is not removal agreement between the United States and a country. In this scenarios, courts have found that the lack of a normal agreement regarding repatriation, lack of diplomatic relationship, and lack of a functioning government support a finding that there is no significant likelihood of removal. *See, e.g. Negusse v. Gonzales*, No. 06-1382, 2007 WL 708615 (W.D. La. Mar. 1, 2007) (granting habeas relief to petitioner detained for approximately one year because the United States did not have a repatriation agreement with Ethiopia and Ethiopia would not issue travel documents because one of the petitioner's parents was not Ethiopian).<sup>4</sup>
- There is either no response from a country designated for removal or a significant delay in receiving a response. *See. e. g., Gonzales-Rondon v. Gillis*, 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen months where there was no response from Venezuelan officials).<sup>5</sup>
- ICE fails to take action to secure travel documents for a prolonged period. *See, e.g. Senor*, 401 F. Supp. 3d at 430-31 (granting habeas relief after ICE initially requested travel documents but where “there [wa]s no identification from the record that anyone ha[d] taken

<sup>4</sup> *See also Gomez Barco*, 2020 WL 7393786, *Islam v. Kane*, No. CV-11-515-PHX-PGR (LOA), 2011 WL 4374226, at \*3 (D. Ariz. Aug. 30, 2011) (ordering release of petitioner detained ten months where petitioner presented evidence that Bangladesh “is one of fifteen countries identified by ICE as least likely to issue travel documents”); *Carreno*, 2020 WL 8366735, *Simoza Rangel v. Gillis*, No. 5:19-cv-118-DCB-MTP, 2020 WL 7223258 (S.D. Miss. Sept. 2, 2020) (granting habeas relief to petitioner detained for sixteen months due to lack of diplomatic relation with Venezuela); *Abduelle v. Gonzales*, 422 F. Supp. 2d 774 (W.D. Tex. 2006) (concluding that the petitioner met the burden to show removal was not reasonably foreseeable after being detained for more than one year when an injunction restricted the government’s ability to remove the petitioner to Somalia).

<sup>5</sup> *See also Sharif*, 2020 WL 7379211; *Aung v. Barr*, No. 20-CV-681-LJV, 2020 WL4581465 (W.D.N.Y. Aug. 10, 2020); *Edwards v. Barr*, No. 4:20cv350-WS-MAF, 2020 WL 6747737 (N.D. Fla. Oct. 14, 2020); *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319 (W.D.N.Y. July 14, 2020); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL 7680560 (W.D. Tex. Nov. 3, 2020); *Singh v. Whitaker*, 362 F. Supp. 3d 93 (W.D.N.Y. 2019); *Butt v. Holder*, No. CA 08-0672-CG-C, 2009 WL 1035354 (S.D. Ala. Mar. 19, 2009) (holding that petitioner met his initial burden where he was held in ICE custody for more than ten months after the issuance of his removal order with no indication from the Pakistan Embassy that travel documents would be issued); *Lawrikov v. Kollus*, No. CV-08-1403-PHX-GMS (LOA), 2009 WL 2905549 (D. Ariz. July 27, 2009); *Reid v. Crawford*, No. 06-02436 PHX-JWS (MEA), 2007 WL 1063413 (D. Ariz. Jan. 31, 2007); *Gui v. Ridge*, No. 3CV031965, 2004 WL 1920719 (M.D. Pa. Aug. 13, 2004); *Shefqet v. Ashcroft*, No. 02C 7737, 2003 WL 1964290 (N.D. III. Apr. 28, 2003).

any further action in the eight months since that time. . .to facilitate Senor's receipt of the necessary travel documents").<sup>6</sup>

22. As the length of detention grows, the period of time that would be considered the "reasonably foreseeable future" shrinks. *See e.g., Zadvydas*, 533 U.S. at 701 (stating that as the length of time in detention grows "what counts as the 'reasonably foreseeable future' conversely would be to shrink"); *Senor*, 401 F. Supp. 3d at 430 ("[T]he passage of time combined with 'the' government [being] no closer to . . . repatriating [a detainee] than they were once they first took him into custody' [is] sufficient to meet that 'initial burden.'"); *Lawrikow*, 2009 WL 2905549, at \*12.
23. Petitioner's continued detention is unlawful, and petitioner is unlikely to be removed in the reasonably foreseeable future. Therefore, Petitioner's detention violates the statute and s/he is entitled to immediate release.
24. Petitioner's detention also violates the Due Process Clause. 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. "Freedom from imprisonment—from government custody, detention or other form of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See, id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Id.* Petitioner's prolonged civil detention, which has lasted well beyond the end of the removal period, and

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<sup>6</sup> *See also Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at \*4 (W.D. Wash. Apr. 25, 2012) (ordering petitioner's release where the government failed "to provide any documentation of efforts. . . to effectuate removal . . . [for] nearly six months").

which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner's detention violates Petitioner's right to due process.

**CONCLUSION**

25. In conclusion, Petitioner's indefinite detention violates the detention statute and is unconstitutional. Petitioner respectfully requests that this Court order Respondents to show cause why should not be granted "within three days unless for good cause additional time, not exceeding twenty days, is allowed," and set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243 and grant the Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from their custody.

Respectfully submitted.

Signature:  \_\_\_\_\_

Name: Edelberto Hernandez Ceihuels

A-Number:  \_\_\_\_\_

Detention Center: Aurora ICE detention center

## Personal Immigration history

- I, Edelberto Hernandez Oelhuela state that I am a Cuban Citizen who enter into USA on April 23, 2004. (08/23/2004), through the Mexican border with a I-94 document (Parole).
- I was arrested by the Miami Dade Police on 2013 due to Marijuana Growing in a private house.
  - I was sent to prison for 3 years and I was released in 2016.
  - When released, I was transferred to Krome D.C. where I was processed and I was in custody of ICE for 90 days.
  - I had a final order of deportation on Sept 15, 2014 and after the 90 days I was released on a supervision without electronic monitoring; reporting to ICE office every 6 months.
  - I have been on supervision for 9 years without any problem. On Sept 10, 2025 when I went to report to ICE office, I was arrested in Colorado where I live. I did not received any document from ICE.
  - I was told that I was going to be deported to Cuba, even though ICE knew that Cuba was not accepting me.
  - In 2003 I became a permanent Resident due to the Act of status adjustment for Cubans.

- On January 12, 2024, I have been arrested for 124 days without an indication of a foreseeable future deportation.
- I was transferred to Florence Detention Center in Arizona to be deported to Mexico but instead I was returned to Colorado (Avoyers ICE Processing Center)
- I am not a risk of flight. I live with my wife of 31 years and my children who are US citizens.
- I am not a danger to community and I was never considered a danger during the 9 years I was under ICE supervision.

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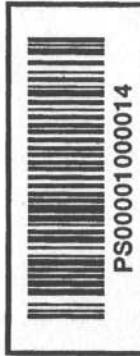
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