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By [Signature] Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF GEORGIA
ATLANTA -TED TURNER DRIVE
IMMIGRATION COURT

RUSSBEL OMAR TAPIA TOBAR,

Petitioner,

v.

ALEJANDRO MAYORKAS, Secretary
of the U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; MERRICK
B. GARLAND, Attorney General of
the United States; SEAN ERVIN Director
of the Folkston Field Office of U.S.
Immigration and Customs Enforcement;
and , Warden, Folkston D Ray,
in their official capacities,

Respondents.

Case No. **1:26-CV-0307**

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

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. Petitioner Russbel Omar Tapia Tobar has been incarcerated since September 30, 2025, over 2 months ago. Petitioner's detention became unconstitutional six months after the removal order in his case became administratively final 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. Petitioner was held without a warrant and removed from his home. 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 Folkston D Ray Ice Processing Center in Folkston, Georgia. He has been detained since on or about September 30, 2025. He has not received an individualized bond hearing before an immigration judge (IJ). He has no criminal convictions.

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 New York, New York 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 Ecuador, was ordered removed following proceedings under 8 U.S.C. § 1229a, 8 U.S.C. § 1231(a)(5), 8 U.S.C. § 1228(b). He has been detained for

over two months and is currently detained at Folkston D Ray ICE Processing Center. He is the custody, and under the direct control, of Respondents and their agents.

10. Respondent Alejandro Mayorkas is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mayorkas is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Mayorkas 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 Russbel Omar Tapia Tobar is sued in his official capacity as the Director of the New York Field Office of U.S. Immigration and Customs Enforcement. Respondent Russbel Omar Tapia Tobar is a legal custodian of Petitioner and has authority to release him.

14. Respondent Russbel Omar Tapia Tobar is the Warden of Russbel Omar Tapia Tobar, 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 30 year-old citizen of Ecuador.

Proceedings Before the [Immigration Court and BIA / Department of Homeland Security]

16. Respondent Russbel Omar Tapia Tobar has a United States born child.

LEGAL FRAMEWORK

17. 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).

18. “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).

19. 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.

20. 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."

21. 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.

22. 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.*

23. 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.

24. 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.

25. 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.

26. 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

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

28. 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.

29. Petitioner has been detained by Respondents for over two months. Over two months of this prolonged detention has taken place *after* his removal.

30. Petitioner doesn’t have a removal order.

31. Petitioner’s prolonged detention is not likely to end in the reasonably foreseeable future. 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.

32. 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)

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

34. 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,


Russel Omar Tapia Tobar

FIRMA



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

Payment Receipt

A payment has been processed for the following case before the Executive Office for Immigration Review.

For cases before the Immigration Court, please contact the Court that is currently hearing your case for questions regarding payment. For cases before the Board of Immigration Appeals (BIA), please contact the BIA Clerk's Office for questions regarding payment at (703) 605-1007.

A copy of this receipt must be included with the application, motion, or appeal that is filed with the Immigration Court or the BIA Clerk's Office. Failure to include a receipt showing proof of payment will result in rejection of the filing.

A-Number:



Payment Tracking ID:



Payment Processed On: 12/1/2025 8:29:04 AM EST

Filing Type: Court - I-589, Application for Asylum (Initial Fee)

Payment Type: PLASTIC_CARD

Payment Amount: \$100.00

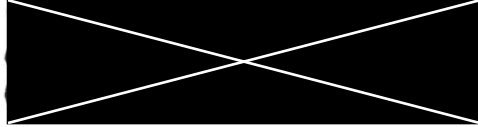
Save or print this receipt immediately. A copy will not be sent via email. The tracking ID is required to retrieve a duplicate receipt.

*Please note there is an **annual fee** for all asylum applications, which is due on the anniversary of each calendar year that an alien's asylum application remains pending; no fee-waiver or reduction in fee is permitted. **This fee must be paid timely**; failure to pay within 30 days of the anniversary due date will likely result in pretermission of the asylum application and an order of removal. This will be the only notice that the alien will receive regarding this annual payment requirement. Payment of this fee can be made at <https://epay.eoir.justice.gov/index>.

Current annual fee amounts can be found at www.justice.gov/eoir/types-appeals-motions-and-required-fees.

B

Maria Cajamarca



November 24, 2025

To Whom It May Concern:

I am writing this letter in support of my good friend and neighbor Russbel Omar Tapia Tobar to attest to his good moral character. I have known Russbel Omar Tapia Tobar for 3 years in a personal capacity, and I can honestly speak to his integrity, reliability, and strong ethical standards.

Throughout the time that I have known Russbel Omar Tapia Tobar, he has consistently demonstrated kindness, honesty, and a very good sense of responsibility towards others. Russbel Omar Tapia Tobar has been actively involved in volunteering work at his local community church and is always willing to help a friend in need. His actions demonstrate his dedication to helping others and improving the welfare of those around him especially his lovely family. His baby girl is the most valuable person in his life, every day he thrives to be the best father figure for that little munchkin.

In our personal interactions as well as community volunteering events, Russbel Omar Tapia Tobar has always shown a high moral compass, honesty, and commitment to treating all individuals with kind and respect. Russbel Omar Tapia Tobar is a person who upholds integrity in every aspect of his life, as a father, friend and neighbor thus earning the trust and admiration of all those who care for him. My husband and I sort of miss the daily stroll he used to take with his partner and baby girl around the block after work.

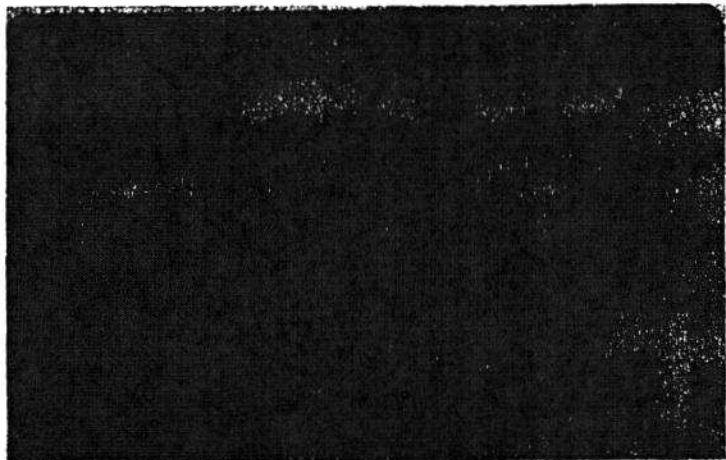
I fully support Russbel Omar Tapia Tobar for any immigration related matters and stand behind his moral character. If given the opportunity, I believe that he will abide by the law and continue to be a valuable member of society and contribute positively to the community. Thank you for your time.

Truly Yours,

Maria Cajamarca



USA Permanent Resident

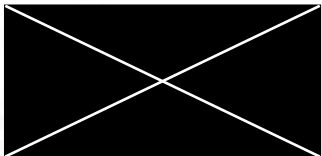


AUGUSTO CELIS
Notary Public, State of New York
No. 01CE4835999
Qualified in Queens County
Commission Expires Dec. 15, 2025

11-28-2025

Mr.

Angel Ramirez



November 26, 2025

Subject: Character Reference Letter for Russbel Omar Tapia Tobar.

To whom it may concern,

My name is Angel Ramirez, residing in the above address, I was born on December 6, 1957 in Ecuador and I am a Permanent Resident since 2021.

I am writing this letter to support the fact that I have known Russbel Omar Tapia Tobar since his childhood, as his uncle we have shared many family moments, during which time I have witnessed his responsibility, respect, and impeccable conduct, values that make him deserving of the appreciation and consideration of those of us who have the opportunity to know him. This is all I can certify in truth.

If you have any questions, please feel free to contact me at the phone number 848-216-9914 or the address above.

Sincerely,


Angel Ramirez




FELISHA E SANCHEZ
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JULY 9, 2029