IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00445 Arias Perez v. Baltazar et al

PETITION AND COMPLAINT FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner, Ivan Arias Perez, brings this petition for a writ of habeas corpus to challenge his continued detention without a significant likelihood of removal in the reasonably foreseeable future. Petitioner is in the physical custody of Respondents at the Aurora Detention Center. He now faces unlawful indefinite detention because the Department of Homeland Security (DHS) has failed to execute his removal for over six months and his removal is not "reasonably foreseeable." *Zadvydas v. Davis*, 533 U.S. 678, 699.
2. Petitioner is a Cuban citizen with a final order of removal to Cuba issued in November of 1996. That removal order was never effectuated, and Mr. Arias Perez was released from ICE custody on an order of supervision (OSUP). Mr. Arias Perez remained out of custody on the OSUP even after being convicted of controlled substance offenses and serving prison a ten-year prison sentence. Mr. Arias Perez was re-detained without explanation or material change nearly fifteen years later on June 20, 2025.

3. ICE took Mr. Arias Perez into custody on June 20, 2025. On October 18, 2025, Mr. Arias Perez received a "Decision to Continue Detention" informing him that ICE would continue holding him without bond. *Evidence in Support of Petition for Writ of Habeas Corpus, Exh. A,* at 2 – 4. The decision states without explanation that it is "based upon: The Significant Likelihood of Removal in the Reasonably Foreseeable Future." *Id.* On January 5, 2026, ICE communicated with counsel for Mr. Arias Perez that they intend to keep Mr. Arias Perez in their custody notwithstanding their apparent inability to actually remove him. *Id., Exh D,* at 10 – 13. On January 6, 2026, ICE communicated to Petitioner that they were trying to effectuate his removal to either Cuba or Mexico but had been unable to do so. *Id.*
4. Petitioner's removal to Cuba is not reasonably foreseeable because the United States does not have relations with Cuba and the Respondents have not identified a country willing to accept Petitioner. Respondents have not demonstrated any actual efforts to secure Petitioner's removal.
5. Petitioner's hypothetical removal to Mexico is also not reasonably foreseeable because no Court has ordered Mr. Arias Perez removed to Mexico and Mr. Arias Perez is entitled to notice and a hearing to contest his removal to Mexico or any third country.
6. Absent relief from this Court, Petitioner will remain detained indefinitely.
7. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release on the conditions of his previous OSUP.

II. PARTIES

1. The Petitioner, Ivan Arias Perez, is a Cuban national. Mr. Arias Perez was most recently taken into ICE custody on June 20, 2025, and has remained in ICE custody continuously since that date.

2. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Mr. Arias Perez, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Mr. Arias Perez. He is sued in his official capacity.

3. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Guadian is the immediate custodian of Mr. Arias Perez and is responsible for Mr. Arias Perez's detention and removal.

4. Kristi Noem is the Secretary of the Department of Homeland Security (DHS). Ms. Noem is responsible for the implementation and enforcement of the INA. DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Mr. Arias Perez's illegal detention. Ms. Noem has ultimate custodial authority over Mr. Arias Perez and is sued in her official capacity.

5. Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. Mr. Lyons is responsible for Mr. Arias Perez's illegal detention and has custodial authority over him.

6. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice (DOJ). The Executive Office for Immigration

Review (EOIR) and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity.

III. JURISDICTION AND VENUE

This Court has subject matter jurisdiction under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

Venue lies in the District of Colorado, the judicial district in which the Immigration and Customs Enforcement ("ICE") Field Office Director, Robert Hagan, is located and where the Petitioner is currently detained. 28 U.S.C.A. § 2241; *Pitman v. United States Citizenship & Immigration Servs.*, No. 16-CV-02584-RBJ, 2017 WL 897851, at *1 (D. Colo. Mar. 7, 2017) ("venue is proper in any judicial district in which one of those named defendant federal officers or employees 'resides,' which has been interpreted to mean the district where any of these officers or employees perform their official duties."). "A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may… be brought in any judicial district in which … the plaintiff resides if no real property is involved in the action." 28 U.S.C.A. § 1391. Venue is further proper at the District Court of Colorado because all Respondents/Defendants are officers of the Justice Department and/or Department of Homeland Security and Petitioners/Plaintiffs reside in this jurisdiction.

IV. BACKGROUND

Mr. Arias Perez is a 49-year-old Cuban national. Mr. Arias Perez last entered the United States in 1996. Mr. Arias Perez was placed in removal proceedings and ultimately ordered removed to Cuba on November 14, 1996. *Evidence in Support of Petition for Writ of Habeas Corpus, Exh. C*, at 8 ("Date [removal] order final: November 14, 1996"); See also: *Exh. D*. Mr. Arias Perez's 1996 removal order was never effectuated by the Department. Mr. Arias Perez was released from ICE custody under an order of supervision. In 2000, Mr. Arias Perez was convicted of drug trafficking and served a ten-year prison sentence. Mr. Arias Perez completed his sentence on November 8, 2010. The Department did not alter Mr. Arias Perez's custody status after his conviction and sentence. After serving his time, Mr. Arias Perez was out of custody from 2010 to June 20 of 2025 when the Department reversed course and took him into custody. Mr. Arias Perez was not advised of any change in law or circumstance that would justify his re-detention. Mr. Arias Perez was not afforded an opportunity to contest his re-detention. Mr. Arias Perez has remained in ICE custody since then without a bond hearing. On October 18, 2025, Mr. Arias Perez received a "Decision to Continue Detention" informing him that ICE would continue holding him without bond. *Id., Exh: A.* The decision states that it is "based upon: The Significant Likelihood of Removal in the Reasonably Foreseeable Future." *Id.* The notice does not support that determination with any evidence, law, or reasoning. *Id.* The remainder of the decision does not elaborate on that likelihood or what makes removable foreseeable now where it could not be effectuated in the preceding several decades. *Id.* On December 30, 2025, Petitioner reached out to the Department advising that Mr. Arias Perez's detention exceeded the statutory removal period. *Id., Exh: D.* As of the date

of this writing, more than 100 additional days have elapsed since ICE claimed Mr. Arias Perez's removal was reasonably foreseeable. On January 5, 2026, Respondent replied that the Department was attempting to remove Mr. Arias Perez to either Cuba or Mexico. *Id.* ("We are currently trying to effect his removal to either Cuba or Mexico.") On January 20, 2025, Petitioner contacted the Department to inquire whether the Department had made arrangements for his removal. *Id.* The Supervisory Detention and Deportation Officer's reply reads in its entirety: "No[.]". *Id.* Petitioner has received no further indication of Respondent's intent beyond: "Your client will remain in detention until his removal or our HQ component decides he should be released." *Id.* Petitioner remains detained.

a. EXHAUSTION OF ADMINISTRATIVE REMEDIES

i. COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1 of the United States District Court for the District of Colorado, counsel for Petitioner Mr. Arias Perez certifies they have been unable to resolve this matter prior to filing this Motion. Counsel will continue to attempt resolution pending a decision on this petition.

ii. EXHAUSTION

Petitioner need not exhaust his administrative remedies. The statutes in question, 8 U.S.C. §1231(a)(6) and 8 U.S.C § 1231(a)(3) have no exhaustion requirements. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). *See Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006) (where the Supreme Court held that Congress intended that the Prisoner Litigation Reform Act exhaustion requirement requires proper exhaustion). In all other instances, "sound judicial discretion governs." *McCarthy*, 503 U.S. 140 at 144.

This Court should not require Petitioners/Plaintiffs to exhaust their administrative remedies. First, the Supreme Court has recognized that courts should not require exhaustion when there is an unreasonable or indefinite time-frame for administrative action. *Id.* at 147. While the agency allows for review of custody reviews through their Headquarters ("HQPDU"), it is not required to issue a decision within any particular length of time. 8 C.F.R. §241.13(g). The custody review regulations do not provide any other administrative method of obtaining or appealing a custody review decision. *See id.* §241.13(g)(2). Exhaustion is not appropriate where "plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* Petitioner has a constitutionally protected liberty interest in freedom from government custody. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Second, exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy*, 503 U.S. at 148 (identical brackets omitted). In this case, Petitioner challenges the constitutionality of the procedures by which ICE reviews the custody status of aliens who are detained after the removal period. The administrative remedy is inadequate to address these constitutional grounds for recovery. Finally, exhaustion is not required where the administrative remedy is inadequate due to agency bias. *Id.* at 148. Numerous courts have recognized the bias inherent in the ICE custody review process. *See Phan v. Reno*, 56 F. Supp. 2d 1149, 1157 (W.D. Wash.1999) ("We have…concerns about the quality of the review afforded by INS to the Petitioners. Indeed, our review of the record confirms that INS does not meaningfully and impartially review the Petitioners' custody status."); *Rivera v. Demore*, No. C 99-3042 THE, 1999 WL 521177, *7 (N.D. Cal. Jul. 13, 1999) (procedural due process requires that alien

release determination be made by impartial adjudicator due to agency bias); *Ekekhor v. Aljets*, 979 F. Supp. 640, 644 (N.D. Ill. 1997); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) ("Due to political and community pressure, INS, an executive agency, has every incentive to continue to detain aliens with aggravated felony convictions, even though they have served their sentences, on the suspicion that they may continue to pose a danger to the community.").

Though exhaustion is not required for the foregoing reasons, Petitioner has sought remedy through the administrative process, as described above. Because these efforts have been fruitless, Petitioner now seeks relief with this Court.

V. DISCUSSION

The Government cannot indefinitely detain a noncitizen with a final order of removal without violating the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690. 8 U.S.C.§ 1231 requires detention of noncitizens with final orders of removal during a 90-day removal period, and it permits – in limited circumstances – continued detention if the noncitizen is not removed during the 90 days. *Id.,* at 683; 8 U.S.C. § 1231(a)(3). Under 8 U.S.C.§ 1231, the Government may continue to detain a noncitizen with a final order of removal beyond the 90-day removal period only where removal is "reasonably foreseeable." *Id.,* at 699 (Once removal is no longer reasonably foreseeable, the purpose of the detention statute is vitiated and, "continued detention is no longer authorized by statute.").

In Zadvydas the Supreme Court held that six months is a presumptively reasonable period of detention. *Id.,* at 701. After six months if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to rebut that showing. *Id.* "As the period of prior post-

removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701. If removal is not reasonably foreseeable, the noncitizen is entitled to release under appropriate conditions. *Id.,* at 700-701.

a. Mr. Arias Perez's detention violates 8 U.S.C.§ 1231 and *Zadvydas* where he has been detained beyond six months and his removal is not reasonably foreseeable.

Zadvydas requires Mr. Arias Perez's release. Mr. Arias Perez was issued a final order of removal on November 14, 1996. That removal order was never executed, and Mr. Arias Perez was released from ICE custody on an OSUP. ICE re-detained Mr. Arias Perez without notice or an opportunity to be heard on June 20, 2025. More than six months have elapsed since he was re-detained. More than 90 additional days have elapsed since Mr. Arias Perez received a Decision to Continue Detention claiming – without support – that his removal was significantly likely in the reasonably foreseeable future. Mr. Arias Perez's detention has become unconstitutionally prolonged.

Mr. Arias Perez has met his burden to demonstrate "good reason" that his removal is not significantly likely in the reasonably foreseeable future. *Zadvydas,* at 701. "Good reason" exists when the presumptively reasonable six months of detention have passed, and the Department has not made "legitimate progress toward removal." *See, e.g., Arach v. Baltazar*, No. 25-CV-03195-PAB, 2025 U.S. Dist. LEXIS 227919, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) (Petitioner detained for roughly seven months and "ICE made no efforts to remove [her] beyond soliciting acceptances" from three countries on just one day); *Salazar-Martinez v. Lyons*, No. 2:25-CV-00961-KG-KBM, 2025 U.S. Dist. LEXIS 226073, 2025 WL

3204807, at *2 (D.N.M. Nov. 17, 2025) (Petitioner detained for seven months and "ICE has not 'identif[ied] any country that has agreed to accept her.'"); *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 U.S. Dist. LEXIS 198310, 2025 WL 2837716, at *2 (D. Kan. Oct. 7, 2025) (Petitioner detained for seven months and "officials have made no progress towards his removal or even identified a possible destination"); *Vargas v. Noem*, No. 25-3155-JWL, 2025 U.S. Dist. LEXIS 191612, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025) (Petitioner detained for nine months and "officials have not been able even to name for him any country to which an inquiry has been made or to which petitioner might possibly be removed"). Mr. Arias Perez has been subject to removal since 1996. The Government has never been able to execute this removal order. No material change in circumstance has altered the Government's ability to execute the removal order now. The Government's inability to execute this removal order for nearly three decades is powerful evidence that removal is not likely in the reasonably foreseeable future. *See, e.g.*, *Phan v. Warden of Otay Mesa Deten. Facility*, 25-cv-02369-AJB-BLM, 2025 WL 3141205, at *4 (S.D. Cal. Nov. 10, 2025) (habeas petitioner met his burden where government previously failed to deport him during removal period and there were no changed circumstances); *Trejo v. Warden of ERO El Paso*, EP-25-CV-401-KC, 2025 WL 2992187, at *5 (noncitizen who had been granted deferral of removal to his home country made initial showing that his removal was not foreseeable). If anything, Mr. Arias Perez's prospects for removal have only dimmed since his conviction for drug trafficking which makes acceptance by a third country unlikely. Mr. Arias Perez is not required to "show the absence of *any* prospect of removal." *Zadvydas,* at 702. There is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

The Department cannot rebut this showing, because the Department has made no meaningful progress toward effectuating the 1996 removal order. The October 2025 Decision to Continue Detention fecklessly alleges a significant likelihood of removal in the reasonably foreseeable future. Conspicuously absent from that decision is any evidence or support indicating what efforts the Government is making to secure Mr. Arias Perez's removal. "Bare assertions" do not satisfy the government's burden under *Zadyvdas*. *Aguilar v. Noem*, 25-cv-03463-NYW, 2025 WL 3514282, at *5 (D. Colo. Dec. 8, 2025) (granting habeas petition where ICE made identical conclusory statements to those in this case). The Government's correspondence with Petitioner's counsel similarly states without elaboration that the Government is "trying to effect his removal to either Cuba or Mexico." *Exh. D.* The Government's response does not indicate what efforts it has made and to what end, given that Mr. Arias Perez's significant criminal history makes him unlikely to be accepted by most countries. The Government has not described any formal requests or provided the status of any such requests. Instead, when asked if the Government had made arrangements for Mr. Arias Perez's removal, the Government simply replied: "No[.]" *Id.* In order to rebut Petitioner's showing "the government must make legitimate progress toward removal." *Arach v. Baltazar*, 25-cv-03195-PAB, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025). The Government has made no progress toward removal at all. The speculative prospect of removal to Mexico is neither progress, nor legitimate, until Mr. Arias Perez has received adequate notice and an opportunity to contest removal to Mexico. The Government has not rebutted Mr. Arias Perez's showing that removal is not likely in the reasonably foreseeable future.

b. Mr. Arias Perez's re-detention without notice or an opportunity to be heard violates 8 C.F.R. § 241.4(l)

Under 8 C.F.R. § 241.4(l) a noncitizen released on an order of supervision may be returned to custody under certain conditions. 8 C.F.R. § 241.4(l). The noncitizen is entitled to mandatory notice of the reasons for revocation of release. *Id.* ("the [noncitizen]will be notified of the reasons for revocation"). They are further entitled to an opportunity to be heard on the matter. *Id.* ("The alien will be afforded an…interview…to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification").

Mr. Arias Perez was out of custody on an Order of Supervision since at least November 8, 2010, after serving a 10-year prison sentence. The Government did not see fit at any point in the fifteen years between November 8, 2010, to re-detain Mr. Arias Perez. On June 20, 2025 the Government took Mr. Arias Perez back into custody without notice of the reasons for revocation. Neither was Mr. Arias Perez provided an opportunity to contest the reasons for revocation. The Government's redetention therefore violates the requirements of 8 C.F.R. § 241.4(l).

VI. CONCLUSION

Under binding Supreme Court precedent, Mr. Arias Perez continued detention violates the Fifth Amendment and 8 U.S.C.§ 1231. Lacking a significant likelihood of removal in the reasonably foreseeable future, Mr. Arias Perez's indefinite detention no longer bears the requisite relationship to the purpose of 8 U.S.C.§ 1231. The Government has had nearly thirty years to effectuate this removal order. No material change now makes them able to do so. The Government has nonetheless re-detained Mr. Arias Perez, held him for more than seven months and claimed the right to continue detaining him indefinitely on the speculative proposition that they are "trying" to effectuate his removal. The Government's inability to demonstrate any

formal efforts or results means they cannot rebut the showing that removal is not likely in the reasonably foreseeable future. The remedy for the Government's unconstitutional deprivation of Mr. Arias Perez's freedom is release on the previous conditions of his supervision. *See Martinez v. Lyons*, 2:25-cv-00961-KG-KBM, 2025 WL 3204807, at *2 (D.N.M. Nov. 17, 2025) ("The remedy for a *Zadvydas* claim is generally release of petitioner under conditions of supervision.") (collecting cases)).

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

1. 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.
2. Petitioner has been detained by Respondents for over seven months. Petitioner's detention is likely to continue indefinitely without intervention from this Court.
3. Because removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates Due Process. *Zadvydas*, 533 U.S. at 690, 699–700.
4. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of U.S.C. §1231(a)(6)

1. 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); s*ee 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 no longer authorized by § 1231(a).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin respondents from transferring Petitioner outside the District of Colorado or removing him from the United States during the pendency of this litigation so as to preserve this Court's jurisdiction over the same;
3. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner on an Order of Supervision reflecting the previous terms of his release;
4. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing, at which Respondent would bear the burden to show bond should be denied, within seven days;
5. Grant any other and further relief that this Court deems just and proper.

DATED this 5th of February, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tiago Guevara, hereby certify that on February 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby further certify that I mailed the document or paper to the following persons via first class mail on February 5, 2026:

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