UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

Lazaro HERNANDEZ-DIAZ, **Petitioner,** vs. **U.S. DEPARTMENT OF HOMELAND SECURITY; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Mary De ANDA-YBARRA, Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations, El Paso Field Office,** **Respondents.**	Case No.

Petition for Writ of Habeas Corpus and Request to Show Cause

Petitioner, by and through undersigned counsel, seeks judicial review of his continued detention under 28 U.S.C. § 2241.

Introduction

1. Petitioner is currently detained at El Paso Camp East Montana, El Paso, Texas.

2. Petitioner, is a national of Cuba, who was ordered removed by the immigration court on September 3, 2008.

3. After the immigration court entered a removal order, and after having determined Petitioner s removal was no longer foreseeable, ICE released Petitioner under the Order of Supervision Program (OSUP).

4. Petitioner faithfully complied and reported under the OSUP program for years. But on July 17, 2025, upon attending a scheduled ICE check-in under OSUP, ICE detained Petitioner.

5. ICE did not detain Petitioner based on his personal circumstances or individualized facts. Instead, Respondents detained Petitioner because of their interpretation of President Trump s order that they to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History. [1] But Respondents power to detain remains checked by law, as this country remains a government of laws and not of men. *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring).

6. Petitioner has been detained by ICE since July 17, 2025, and there is no end in sight.

7. Given that Petitioner always complied with ICE s OSUP orders, there was no sense in re-detaining him. Respondents actions have only wasted resources, e.g., government resources, court resources, personal resources.

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[1] Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.).

8. Petitioner has not been given any document evincing a third country s formal acceptance of receiving him; or if that country seeks to then pass him over to another country, then another, and another.

9. Through this filing, Petitioner challenges his re-detention and indefinite detention as a violation of the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act (INA).

10. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner s release from custody, with appropriate conditions of supervision if necessary. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. Continued detention under these circumstances serves no legitimate governmental purpose and violates the humanitarian and constitutional principles that govern civil immigration custody.

Jurisdiction

11. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by DHS in violation of the Constitution and laws of the United States.

12. 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

13. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained within the geographic boundaries of the Western District of Texas, at El Paso Camp East Montana Detention Center located in El Paso, Texas.

Exhaustion and Requirements of 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents forthwith, unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Cour must require Respondents to file a return within three days unless for good cause additional time, not exceeding twenty days, is allowed. *Id*.

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. *Fay v. Noia*, 372 U.S. 391, 400 (1963).

16. Petitioner is in custody for the purpose of § 2241 because he is detained by Respondents at an immigration detention facility, under the direct control of Respondents and their agents.

Parties

17. Petitioner is a native of Cuba. Petitioner has been in DHS custody since on or about July 17, 2025. Petitioner is currently detained El Paso Camp East Montana Immigration Detention Center located in El Paso, Texas.

18. U.S. Department of Homeland Security [DHS] is the federal agency responsible for implementing and enforcing our nation s immigration laws. DHS oversees its component agencies, e.g., ICE and USCIS.

19. Defendant Kristi Noem is the Secretary of DHS. In that capacity, she is charged with the administration and enforcement of the nation s immigration laws. She is used in her official capacity.

20. Defendant Pamela Bondi is the United States Attorney General. In this capacity, she directs agencies within the United States Department of Justice, including the Executive Office for Immigration Review [EOIR], which houses the immigration courts and the Board of Immigration Appeals. Defendant Bondi is responsible for the

administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR. She is sued in her capacity.

21. Defendant, Mary De Anda-Ybarra, is named in her official capacity as Field Office Director of the ICE Enforcement & Removal Operations (ERO) El Paso, Texas Office. In this capacity, she is responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings within the El Paso Area, which includes El Paso Camp East Montana Immigration Detention Center, where Petitioner is confined. As such, she is a custodian of Petitioner.

Relevant Factual Background

22. Petitioner is a Cuban national, with a date of birth of [redacted].

23. Petitioner was paroled into the United States on January 7, 1991, at Key West, Florida. Pet r s App. at 5.

24. On May 17, 1996, Petitioner was convicted in Florida for attempt to purchase a controlled substance. *Id.*

25. On September 21, 2006, Respondents commenced removal proceedings against Petitioner. *See* Pet r s App. at 3.

26. On September 3, 2008, the immigration court in Miami, Florida, ordered Petitioner removed from the United States. *See* Pet r s App. at 2.

27. After receiving his removal order, Petitioner was placed on ICE s Order of Supervision Program (OSUP).

28. Petitioner has faithfully complied with ICE s OSUP requirements and appointments since his enrollment in to the program.

29. On July 17, 2025, during a scheduled check-in under the program, Petitioner was detained by ICE.

30. Petitioner has been detained in ICE custody since July 17, 2025, and no information as to the end to his detention has been provided.

31. Nor have Respondents notified Petitioner regarding the foreseeability of his removal from the United States.

32. Nothing within Petitioner s record leads to the conclusion that he is violent, dangerous, or a flight-risk.

33. In fact, Petitioner, understanding the risks of detention, voluntarily presented himself before ICE officials on July 17, 2025, just as he has been doing for years.

34. There is no reason why Respondents could not have continued their attempts to enforce Petitioner s removal without having to re-detain Petitioner.

35. The record does not support a finding that Petitioner is a flight risk or a danger to the community.

36. Petitioner s re-detention serves no value outside of causing undue strain and expense on the U.S. taxpayers, this Court s resources, and Petitioner s U.S. citizen family.

37. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody.

Legal Background

a. Statutory, Regulatory, and Constitutional Framework Limits to Detention

38. In *Zadvydas v. Davis* , 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when read in light of the Constitution s demands, limits an alien s post removal period detention to a period reasonably necessary to bring about that alien s removal form the United States. 533 U.S. at 689. A habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal. *Id.* at 699. If the individual s removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute. *Id.* at 699 700.

39. In determining the length of a reasonable removal period, the Court adopted a presumptively reasonable period of detention of six

months. *Id.* at 701. After six months, the government bears the burden of disproving an non-citizens good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Zhou v. Farquharson* , 2001 U.S. Dist. LEXIS 18239, *2 *3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*). Moreover, for detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the reasonably foreseeable future conversely would have to shrink. *Zadvydas*, 533 U.S. at 701. ICE s administrative regulations also recognize a six month period for determining whether there is a significant likelihood of an alien s removal in the reasonably foreseeable future. *See* 8 C.F.R. §241.4 (k)(2)(ii).

40. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government s burden to establish that a non-citizen petitioner will be deported in the reasonably foreseeable future. *See Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002) (government failed to show that alien s deportation to Guyana was reasonably foreseeable where the government offered historical statistics of repatriation to Guyana but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested). Rather for the

government to meet its burden of showing that a non-citizen s repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner s case.

41. A non-citizen who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the individual in question. *See Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court will likely grant habeas petition after fourteen months if ICE is unable to present document confirmation that the Nigerian government has agreed to [petitioner s] repatriation); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government s failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner s removal in the reasonably foreseeable future). The INA presumes that such individual should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See* 8 U.S.C. § 1231(a)(3) (directing that if a noncitizen is not removed with the removal period, the noncitizen shall be subject to supervision under regulations prescribed by the Attorney General).

42. Where the detention in question exceeds a period reasonably necessary to secure removal, release is the proper remedy for unconstitutionally prolonged post-removal-order detention. *See Zadvydas*, 533 U.S. at 699-700.

b. Revocation of Release on an Order of Supervision

43. Pursuant to federal regulation, once a noncitizen is released on an OSUP under § 1231(a)(3), that release may only be revoked by certain government officials and under certain circumstances. *See* 8 C.F.R. § 241.4(l)(2).

44. Release on an OSUP may only be revoked by a qualifying official where one of four conditions have been met: (i) The purposes of release have been served; (ii) The [noncitizen] violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate. *Id.*

45. Where a noncitizen s release is revoked, the noncitizen must be notified of the reasons for revocation and afforded an opportunity to respond through an initial informal interview promptly after [their return to] custody. 8 C.F.R. § 241.4 *(l)*(1).

46. If a noncitizen is not released from custody following the informal interview, ICE Headquarters is required to schedule an additional custody review process. The noncitizen must be notified of a records review and scheduling of an interview, which will ordinarily be expected to occur within three months after release is revoked. 8 C.F.R. § 241.4(*l*)(3). The custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release. *Id.*

Cause of Action

I. Count 1: Violation of the INA

47. The Petitioner s continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. The six month presumptively reasonable period for continued removal efforts has expired. Petitioner still has not been removed, and for the reasons outlined above, Petitioner s removal to Cuba is not reasonably foreseeable. The Supreme Court held in *Zadvydas* that ICE s continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonably and in violation of 8 U.S.C. §1231(a). 533 U.S. at 701.

48. As stated earlier, Petitioner has been reporting to ICE since the issuance of his order of removal, i.e., September of 2008. Some of Petitioner s time in ICE custody has been in detention and under the Order of Supervision Program. At no point, was his removal foreseeable.

49. As it stands, Petitioner has not been provided any documentation regarding a formal acceptance of his person to a third country.

50. Moreover, Petitioner has not violated any of the conditions of OSUP, nor is he is a danger to the community or a flight risk.

III. Count 2: Substantive Due Process Violation

51. Petitioner s continued detention violates Petitioner s right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint. *See e.g., Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

52. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner s liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the

alien s removal, because any other reading would go beyond the government s articulated interest to effect the alien s removal. *See Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner s substantive due process rights were violated, and noting that If deportation can never occur, the government s primary legitimate purpose in detention executing removal is nonsensical.).

53. Since 2008, ICE has had the opportunity to effectuate Petitioner s removal. During that time, Respondents have not initiated any process to remove Petitioner to a third country. There is no significant likelihood of his removal in the reasonably foreseeable future. Nor have any other facts or circumstances changed for Petitioner that would change Respondents assessment of his risk of flight or his danger to the community.

III. Count 3: Procedural Due Process Violation

54. The Under the Due Process Clause of the Fifth Amendment, a non-citizen is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision maker to review the continued custody of

Petitioner violates Petitioner s right to procedural due process. There is no administrative mechanism in place for the Petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates *Zadvydas*.

55. While the government has discretion to detain individuals under 8 U.S.C. § 1231 and to revoke custody decisions pursuant to the same authority, this discretion is not unlimited. *See Zadvydas*, 533 U.S. at 698. Additionally, when agencies fail to adhere to their own policies as required by *Accardi*, the result can be a due process violation. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (An agency s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual s constitutional right to due process.) (internal quotations omitted).

56. Here, Petitioner has been deprived of his liberty without the process due at every stage of his re-detention and now indefinite detention, resulting in several independent violations of his due process rights.

57. Respondents have re-detained Petitioner in an arbitrary manner and without the formal processes and findings that are required by statute and regulation to revoke his OSUP. *See*8 C.F.R. § 241.4(*l*)(1)-(3).

Because no individualized determination for revocation has been made and because Petitioner has not been afforded any notice or an opportunity to respond to the reasons for revocation, Respondents categorical revocation of Petitioner s release violates Petitioner s right to procedural due process.

58. Petitioner s detention thus violates procedural due process.

Request for Relief

Petitioner respectfully request this Honorable Court to:

a) Accept jurisdiction of the matter;

b) Order that Petitioner shall not be transferred outside the Western District of Texas while this habeas petition is pending;

c) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e) Declare that Petitioner s detention is unlawful; and

f) Grant any other and further relief that this Court deems just and proper.

Dated: February 12, 2026 Respectfully submitted,

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