UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JIMMY EDUARDO TROCHE MONTOYA, Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; GEORGE VALDEZ, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. 1:26-cv-00844 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF **A #** [redacted]

INTRODUCTION

1. Petitioner, Mr. Jimmy Troche Montoya, is a citizen of Cuba. Based on information and belief, U.S. Immigration and Customs Enforcement ("ICE") officers apprehended him on or about June 2025 in Colorado. ICE is now unlawfully detaining him.
2. Petitioner is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. *See* ICE Detainee Locator Results, Exhibit 1.
3. Petitioner entered the United States sometime on or around 2023 through the CBP One application that nonimmigrants at the time could use to present an asylum claim. He has not left since that entry. He lived in the country for more than two years before his ICE arrest.
4. Following Petitioner's entry the U.S. through the CBP One app, Petitioner was issued a notice to Appear and was placed in removal proceedings. *See* Executive Office for Immigration Review ("EOIR") Automated Case Information, Exhibit 2.
5. On April 11, 2025, Mr. Troche Montoya filed a Form I-485 Application to Register Permanent Residence or Adjust Status with United States Citizenship and Immigration Services ("USCIS") to obtain permanent resident status under the Cuban Adjustment Act ("CAA"), Pub. L. 89-732 (1966). *See* USCIS Receipt Notice, Exhibit 3.
6. On October 2, 2025, an Immigration Judge ("IJ") denied Petitioner's application for Asylum, but granted Petitioner Withholding of Removal, with an alternate order of removal to Cuba. *See* Order of the Immigration Judge, Exhibit 4. Neither Petitioner nor the Department of Homeland Security ("DHS") appealed this decision. *Id.*

7. Under 8 U.S.C. §241(b)(3), Petitioner, having been granted Withholding of Removal, cannot be removed to his country of origin, Cuba, as the IJ determined that it is more likely than not that his life or freedom would be threatened in that country.

8. Upon information and belief, Petitioner is not a citizen, national, or lawful permanent resident of any country other than Cuba, and has no family or other ties to any country other than Cuba and the United States that would allow him to obtain any such status in a third country.

9. ICE has continued to detain Petitioner since October 2025, despite his being granted Withholding of Removal, and he has been detained a period of over 8 months in total. This detention is unlawful because there is no significant likelihood that Petitioner will be removed from the United States in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

10. To the best of Petitioner's knowledge, Respondents have not sought or received the agreement of any third country to accept Petitioner.

11. Through this Petition, Mr. Troche Montoya asks this Court to find that Respondent have unlawfully detained him, that there is no significant likelihood that he will be removed from the United States in the reasonably foreseeable future, and to order the immediate release of Petitioner from custody. *Zadvydas*, 533 U.S. at 687-88, 701.

12. If this Court does not order Petitioner's immediate release, he seeks enforcement of his Due Process rights, which entitle him, even if there were a significant likelihood of his removal from the United States in the reasonably foreseeable future, to regular custody reviews under 8 C.F.R. §241.4. *See e.g. Misirbekov v. Venegas*, 796 F. Supp. 3d 436, 439-40 (S.D. Texas 2025).

13. A review of custody under 8 C.F.R. §241.4 requires ICE to consider whether Petitioner's release from custody "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States," based on factors including whether he is a nonviolent person, disciplinary history, family and other ties to the United States, and ability to adjust to life in the community. 8 C.F.R. §241.4(d)(1), (e), and (f). The first such review must be conducted prior to the expiration of the 90 day period after an order of removal becomes administratively final, and Petitioner must be provided notice in writing of the result of this review. *See* 8 U.S.C. §1241(a)(1) through (a)(3) and 8 C.F.R. §241.4(k)(1)(i); *Misirbekov*, 796 F. Supp 3d at 439-40. A noncitizen released after such a review is subject to supervision, as described in 8 C.F.R. §241.5.
14. ICE must also determine, pursuant to 8 C.F.R. §241.13, whether there is "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future," and if so, release Petitioner under appropriate conditions set forth in 8 U.S.C. §1231(a)(3) and 8 C.F.R. §241.13(h).
15. The alternate removal order in Petitioner's case became administratively final on October 2, 2025, as both he and DHS waived appeal. *See* Order of the Immigration Judge, Exhibit 4. The 90 day period during which Respondents were required to conduct the reviews under 8 C.F.R. §§241.4 and 241.13 expired on December 31, 2025. To the best of Petitioner's knowledge, Respondents have conducted no such review in his case. Upon information and belief, he has received no notice in writing of the result of any such review, as required by 8 C.F.R. §241.4(k)(1)(i).

16. Because Respondents are detaining Petitioner in violation of his constitutional rights under *Zadvydas*, the Court should order that within one day, Respondents must release Petitioner.

17. In the alternative, the Court should order Respondents to immediately conduct the required review of Petitioner's custody under 8 C.F.R. §§241.4 and 241.13, and notify him in writing of the result.

CUSTODY

18. Petitioner is currently in the custody of ICE at the GEO Aurora Contract Detention Facility. *See* Exhibit 1. He is therefore in "'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

19. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

20. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq*., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

21. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

23. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents without the opportunity for bond with the Immigration Court.

24. The Court should grant the petition for writ of habeas corpus "forthwith," as Petitioner's continued detention is in clear violation of the permissible detention allowed under *Zadvydas*, as there is no significant likelihood that the government will be able to effectuate his removal in the reasonably foreseeable future and he has, as of this date, remained in custody for more than 8 months.

25. Alternatively, this Court should grant the Petition because Petitioner's detention is in violation of his Due Process rights as Respondents have failed to conduct the required review of Petitioner's custody under 8 C.F.R. §§241.4 and 241.13. *Misirbekov*, 796 F. Supp 3d at 439-40.

VENUE

26. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver Field Office, and he is currently detained in Aurora, Colorado, at the GEO Aurora Contract Detention Facility.

See Exhibit 1.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

28. Petitioner cannot seek a custody redetermination hearing before an IJ because a final decision in his removal proceedings has already been rendered, and was not appealed. *See* Exhibit 4. As such, the IJ no longer has jurisdiction over his case. *See* 8. C.F.R. §§1003.19 and 1236.1.

29. Additionally, EOIR does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

30. The sole administrative remedies available to Petitioner are the custody reviews require under 8 C.F.R. §§241.4 and 241.13, which ICE has failed to conduct in his case, nearly two months after the date they should have been completed and Petitioner notified in writing of the result. *See* 8 U.S.C. §1241(a)(1) through (a)(3); *Misirbekov*, 796 F. Supp 3d at 439-40. In *Misirbekov*, ICE was late in conducting the review required within 90 days of the finality of the petitioner's removal order, and when they did so, provided only "boilerplate and pretextual" reasons for continuing to detain him. *Id.* at 439. This indicates that pursuing these remedies would also be futile for Petitioner here.

PARTIES

31. Petitioner is from Cuba and has resided in the U.S. since 2023. He is currently detained in the Aurora Contract Detention Facility in Aurora, Colorado.

32. Respondent Juan Baltazar is sued in his official capacity as Warden of the Aurora ICE Processing Center. In his official capacity, Juan Baltazar is Petitioner's immediate custodian.

33. Respondent George Valdez is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent George Valdez is the legal custodian of Petitioner.

34. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

35. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

36. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

37. The INA prescribes basic forms of detention for noncitizens in removal proceedings.

38. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review

custody determinations made by DHS), 1236.1(d) (same).

39. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

40. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231 (a)-(b).

41. However, the Supreme Court has held that immigration detention may not be indefinite and must bear a reasonable relation to its purpose, namely effectuating a removal order. *Zadvydas*, 533 U.S. at 689-90.

42. In *Zadvydas*, the Court construed 8 U.S.C. § 1231(a)(6) to contain an implicit "reasonable time" limitation to detention to avoid serious constitutional concerns, and established a framework for post-removal-order detention: detention beyond six months is presumptively unreasonable; and, after six months, once 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. 533 U.S. at 701.

43. If there is no significant likelihood of removal in the reasonably foreseeable future, continued detention is not authorized. *Id.* at 699-701.

44. Even if there were a significant likelihood of the noncitizen's removal from the United States in the reasonably foreseeable future, Due Process requires the government to conduct regular custody reviews under 8 C.F.R. §241.4. *See e.g. Misirbekov v. Venegas*, 796 F. Supp. 3d 436, 439-40 (S.D. Texas 2025).

45. A review of custody under 8 C.F.R. §241.4 requires the government to consider whether Petitioner's release from custody "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States," based on factors including whether he is a nonviolent person, disciplinary history, family and other ties to the United States, and ability to adjust to life in the community. 8 C.F.R. §241.4(d)(1), (e), and (f). The first such review must be conducted prior to the expiration of the 90 day period after an order of removal becomes administratively final, and Petitioner must be provided notice in writing of the result of this review. *See* 8 U.S.C. §1241(a)(1) through (a)(3) and 8 C.F.R. §241.4(k)(1)(i); *Misirbekov*, 796 F. Supp 3d at 439-40.

46. The government must also determine, pursuant to 8 C.F.R. §241.13, whether there is "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future," and if so, release the noncitizen under appropriate conditions set forth in 8 U.S.C. §1231(a)(3) and 8 C.F.R. §241.13(h).

47. Accordingly, Petitioner's continued detention is unlawful under *Zadvydas* because he has been detained since June 2025, well beyond six months, without release and without any expected end date to his detention.

48. There is no significant likelihood that Petitioner will be removed from the United States in the reasonably foreseeable future, because he was granted Withholding of Removal under 8 U.S.C. §241(b)(3). Respondents therefore cannot remove him to his country of origin, Cuba, as the IJ determined that it is more likely than not that his life or freedom would be threatened in that country.

49. There is no significant likelihood that Petitioner will be removed to any country other than Cuba, as he has no other citizenship, nationality, or lawful status and has no family or other ties to any third country that would allow him to obtain any such status. To the best of Petitioner's knowledge, Respondents have not sought or received the agreement of any third country to accept Petitioner.
50. Because Petitioner's removal is not practically attainable, and the government has no plan to effectually remove him under the law, his detention is indistinguishable from the indefinite detention rejected in *Zadvydas*.
51. Further, Petitioner is not a danger to the community of the United States. By granting Withholding of Removal, the IJ necessarily concluded that he has not been convicted of any "particularly serious crime" that would render him a danger to the community, and that at there are no "reasonable grounds to believe" that he is "a danger to the security of the United States." 8 U.S.C. §1231(b)(3(B)(ii) and (iv).
52. Petitioner's continued detention without the opportunity for release, despite having been granted relief from removal by an IJ, is therefore unlawful.

STATEMENT OF FACTS

53. Petitioner is a citizen of Cuba.
54. Upon information and belief, Petitioner has resided in the U.S. since 2023 following his entry using the CBP One application.
55. Upon information and belief, Petitioner has never been convicted of any crime.
56. On April 11, 2025, Mr. Troche Montoya filed a Form I-485 Application to Register Permanent Residence or Adjust Status with United States Citizenship and Immigration

Services ("USCIS") to obtain permanent resident status under the Cuban Adjustment Act ("CAA"), Pub. L. 89-732 (1966). *See* USCIS Receipt Notice, Exhibit 4.

57. ICE initially detained Petitioner in June 2025 and has remained in immigration detention since.

58. Petitioner sought relief in the form of Asylum and Withholding of Removal before the Immigration Court.

59. On October 2, 2025, an Immigration Judge ("IJ") denied Petitioner's application for Asylum, but granted Petitioner Withholding of Removal, with an alternate order of removal to Cuba. *See* Order of the Immigration Judge, Exhibit 4. Neither Petitioner nor the Department of Homleand Security ("DHS") appealed this decision. *Id.*

60. He remains in detention at the GEO Contract Detention Center in Aurora, CO. *See* Exhibit 1.

61. Petitioner cannot seek a custody redetermination hearing before an IJ because a final decision in his removal proceedings has already been rendered, and was not appealed. *See* Exhibit 4. As such, the IJ no longer has jurisdiction over his case. *See* 8. C.F.R. §§1003.19 and 1236.1.

62. The alternate removal order in Petitioner's case became administratively final on October 2, 2025, as both he and DHS waived appeal. *See* Exhibit 4. The 90-day period during which Respondents were required to conduct the reviews under 8 C.F.R. §§241.4 and 241.13 expired on December 31, 2025. To the best of Petitioner's knowledge, Respondents have conducted no such review in his case. Upon information and belief, he has received no notice in writing of the result of any such review, as required by 8 C.F.R. §241.4(k)(1)(i).

63. Without relief from this Court, Petitioner faces continued detention without release.

COUNT I

Violation of Fifth Amendment Right to Due Process

64. Petitioner restates and re-alleges all paragraphs 1 to 61 as if fully set forth herein.

65. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

66. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

67. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319, 334-335 (1976).

68. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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.").

69. The risk of erroneous deprivation is exceptionally high. Petitioner has been granted Withholding of Removal by an IJ, preventing his removal to Cuba, and he has a pending Application to Register Permanent Residence or Adjust Status with United States Citizenship and Immigration Services ("USCIS") to obtain permanent resident status under the Cuban Adjustment Act ("CAA"), Pub. L. 89-732 (1966). *See* USCIS Receipt Notice, Exhibit 3.

70. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

71. Furthermore, the "fiscal and administrative burdens" of releasing Petitioner with appropriate conditions under 8 U.S.C. §1231(a)(3), 8 C.F.R. §241.13(h)(1), or 8 C.F.R. §241.5, are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

COUNT II

Violation of 8 U.S.C. §1231(a)(1) through (a)(3), and the Detention Regulations, 8 C.F.R. §§241.4, 241.5, and 241.13

72. Petitioner restates and re-alleges all paragraphs 1 to 61 as if fully set forth herein.

73. If a detained noncitizen ordered removed from the United States is not removed within the 90 day period after the order of removal becomes administratively final, the government must, prior to the expiration of that period, review his case to determine if his release from custody "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States," based on factors including whether he is a nonviolent person, disciplinary history, family and other ties to the United States, and ability to adjust to life in the community. 8 C.F.R. §241.4(d)(1), (e), and (f).

74. The government must also determine, pursuant to 8 C.F.R. §241.13, whether there is "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably

foreseeable future," and if so, release the noncitizen under appropriate conditions set forth in 8 U.S.C. §1231(a)(3) and 8 C.F.R. §241.13(h).

75. The applicable 90-day period in Petitioner's case elapsed nearly two months ago, and to the best of Petitioner's knowledge, Respondents have conducted no such review in his case. pon information and belief, he has received no notice in writing of the result of any such review, as required by 8 C.F.R. §241.4(k)(1)(i). Respondents' failure to conduct any such review violates 8 U.S.C. §1231(a)(1) through (a)(3) and C.F.R. §§241.4, §241.5 and 241.13, as well as violating Petitioner's Due Process rights. *Misirbekov*, 796 F. Supp 3d at 439-40.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that he not be transferred outside of this District;

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

(4) Declare that his detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody immediately, or in the alternative, to immediately conduct the required review of Petitioner's custody under 8 C.F.R. §§241.4 and 241.13, and notify him in writing of the result.

(6) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant him any further relief this Court deems just and proper.

Date: March 2, 2026

Respectfully Submitted,

/s/Scott Brian Petiya

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Scott Brian Petiya, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 2nd day of March, 2026.

/s/ Scott Brian Petiya. Esq.