IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00844-GPG

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. Immigration and Customs Enforcement;
TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents.

RESPONSE TO PETITION (ECF No. 1) AND ORDER TO SHOW CAUSE (ECF No. 4)

Pursuant to the Court's Order, ECF No. 4, Respondents respond to the Petition for Writ of Habeas Corpus, ECF No. 1 (filed 3/03/26).[1] Petitioner asserts that his continued detention by U.S. Immigration and Customs Enforcement ("ICE") violates 8 U.S.C. § 1231(a) and his due process rights under the Fifth Amendment because his removal is not likely to occur in the reasonably foreseeable future. Thus, he seeks

[1] This response is timely because the Court ordered a response within 30 days of service, and the United States Attorney's Office received service on March 10, 2026.

immediate release. In the alternative, he requests an order directing Respondents to conduct review of his custody under 8 C.F.R. § 241.14 and 241.13.

The Court should deny the Petition. Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6), because Petitioner is "inadmissible" under 8 U.S.C. § 1182—a fact he does not contest. The burden, then, is on Petitioner to show that his detention while awaiting removal violates due process under the standards prescribed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has not met that burden, and Respondents' evidence shows ICE has been pursuing steps to effectuate Petitioner's removal and that his removal to a third country is significantly likely in the reasonably foreseeable future.

BACKGROUND

Petitioner applies for admission to the United States. Petitioner is a citizen of Cuba. ECF No. 1 ¶ 53; *see also* Ex. A, Declaration of Alexis Luquin ("Luquin Decl.") ¶ 4. On November 7, 2023, Petitioner applied for admission to the United States at the San Ysidro Port of Entry in California, at the Mexican border. Luquin Decl. ¶ 5. Customs and Border Protection ("CBP") determined that Petitioner was inadmissible and issued him a Notice to Appear ("NTA"), initiating removal proceedings. *Id.* ¶ 7. The NTA charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), because he was, at the time of his application for admission, not in possession of valid entry documents. *Id.* CBP paroled Petitioner into the United States. *Id.* ¶ 5.

Petitioner enters ICE custody. On April 15, 2025, Petitioner applied for permanent residence, under the Cuban Adjustment Act of 1966. *Id.* ¶ 8. U.S.

Citizenship and Immigration Services ("USCIS") has not issued a final adjudication of Petitioner's application. *Id.* On May 27, 2025, Petitioner was arrested in [redacted] Florida, on charges of domestic battery. *Id.* ¶ 9. (Weeks later, the State of Florida issued a "no action" on this charge. *Id.* ¶ 9 n.1.) On May 30, 2025, ICE arrested and detained Petitioner upon his release from state custody. *Id.* ¶ 11. Petitioner was transferred to the ICE contract detention facility in Aurora, Colorado. *Id.* ¶¶ 1, 12. On July 10, 2025, in immigration court, Petitioner admitted the allegations and charge in the NTA. *Id.* ¶ 13. Petitioner filed an application for asylum shortly thereafter. *Id.* ¶ 14.

Petitioner receives a final order of removal. On October 2, 2025, an immigration judge found Petitioner inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), denied his application for asylum, ordered him removed to Cuba, and granted his application for withholding from removal. ECF No. 1 ¶ 6; ECF No. 1-2 at 12 § II.A; *id.* at 14 § IV; Luquin Decl. ¶ 15. Petitioner did not appeal the order. ECF No. 1-2 at 14 § IV; Luquin Decl. ¶ 15. The removal order became administratively final on October 2, 2025, because Petitioner waived appeal. *See* ECF No. 1 ¶ 26; ECF No. 1-2 at 15; Luquin Decl. ¶ 15. Petitioner remains in ICE custody pending removal. ECF No. 1 ¶ 60; Luquin Decl. ¶ 17.

ICE conducts a post-order custody review. Less than 90 days later, on December 17, 2025, ICE conducted a post-order custody review pursuant to 8 C.F.R. § 241.4. Luquin Decl. ¶ 19. ICE determined that Petitioner did not satisfy the criteria for release because he failed to demonstrate that, if released, he would not pose a threat to public safety or that there was not a significant risk of flight pending removal. *Id.* ICE

continued to detain Petitioner. *Id.*

ICE serves Petitioner with a Notice of Removal to Mexico. On January 23, 2026, ICE served Petitioner with a Notice of Removal to Mexico. *Id.* ¶ 20. A few days later, Petitioner claimed fear of removal to Mexico. *Id.* ¶ 21. ICE referred Petitioner to USCIS to determine his eligibility for protection from removal to Mexico under 8 U.S.C. § 1231(b)(3). That provision provides that a noncitizen may not be removed to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country based on certain characteristics of the noncitizen, subject to exceptions. *See* 8 U.S.C. § 1231(b)(3)(A)-(B). USCIS conducted a screening interview with Petitioner. Luquin Decl. ¶ 22. On February 12, 2026, USCIS determined that Petitioner was not eligible for relief. *Id.* ¶ 22.

ICE reviews Petitioner's custody status. On February 17, 2026, ICE served Petitioner with a notice of interview to review his custody status. *Id.* ¶ 23. The notice informed Petitioner that ICE would interview him regarding his potential release from custody and that his release would be dependent on him demonstrating that he will not pose a danger to the community or a flight risk. *Id.* On March 19, 2026, ICE conducted a personal interview with Petitioner. *Id.* ¶ 24. Petitioner was given the opportunity to make a statement and provide documentation relevant to his custody review. *Id.* At the conclusion of the interview, the panel recommended that Petitioner remain in custody, because he did not satisfy the criteria for release under 8 C.F.R. § 241.4(e). *Id.*

ICE is pursuing Petitioner's removal. ICE continues to pursue Petitioner's removal to Mexico, and ICE expects Petitioner to be removed in the reasonably

foreseeable future. *Id.* ¶¶ 19, 25. ICE considers Petitioner "a priority for removal." *Id.* ¶ 27. As noted above, ICE served Petitioner with a notice of removal to Mexico. *Id.* ¶ 20. And in recent months ICE has successfully removed Cuban citizens to Mexico, as discussed further below. *See also id.* ¶ 26.

Petitioner brings this habeas petition. On March 2, 2026—five months after Petitioner's order of removal became final—filed this habeas petition. He asserts two claims, contending that: (1) his detention violates due process, ECF No. 1 ¶¶ 64-71, and (2) he has not received a custody review, *id.* ¶¶ 72-75. He seeks immediate release, or in the alternative, an order directing Respondents to provide him a "review of Petitioner's custody under 8 C.F.R. §§ 241.4 and 241.13, and notify him in writing of the result." *Id.* at 15.

ARGUMENT

I. Petitioner's detention is authorized by statute.

Congress has directed that noncitizens who are ordered removed should be removed within 90 days and may be detained during that "removal period" to accomplish that purpose. The INA provides that "[e]xcept as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days," 8 U.S.C. § 1231(a)(1)(A), and that "[d]uring the removal period, the Attorney General shall detain the alien." *Id.* § 1231(a)(2)(A).

The 90-day removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.
(ii) If the removal order is judicially reviewed and if a court orders a stay of the

removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B).

However, not every noncitizen who is ordered removed is actually removed during that initial 90-day period. *See Zadvydas*, 533 U.S. at 701 ("we doubt that when Congress shortened the removal period to 90 days in 1996 it believed that all reasonably foreseeable removals could be accomplished in that time"). Whether ICE will detain and remove an individual may depend on resource constraints and practical obstacles. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 546 (2021) (recognizing that "DHS routinely holds aliens under [8 U.S.C. § 1231(a)] when geopolitical or practical problems prevent it from removing an alien within the 90-day period"). And the Executive Branch "retains discretion over whether to remove a noncitizen from the United States." *United States v. Texas*, 599 U.S. 670, 679 (2023).

Congress provided in § 1231(a)(6) that certain aliens who are "ordered removed . . . may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022) ("§ 1231(a)(6) provides that after a 90-day removal period a noncitizen may be detained" under certain circumstances) (quotation marks omitted); *Demore v. Kim*, 538 U.S. 510, 527 (2003) ("Section 1231(a)(6) provides . . . that when an alien who has been ordered removed is not in fact removed during the 90-day statutory 'removal period,' that alien 'may be detained beyond the removal period' in the discretion of the Attorney General").

Petitioner's detention is authorized by statute. As relevant here, § 1231(a)(6)

permits detention past the removal period of an alien who is "inadmissible" as that term is defined by the INA. Specifically, § 1231(a)(6) provides that "[a]n alien ordered removed who is inadmissible under section 1182 of this title . . . may be detained beyond the removal period . . . ." 8 U.S.C. § 1231(a)(6). Petitioner is inadmissible under this provision. *See* ECF No. 1-2 at 12 § I (immigration judge order finding Petitioner inadmissible under § 1182(a)(7)(A)(i)(I)). Thus, Petitioner's detention is authorized by law.

II. Petitioner's detention does not violate due process under *Zadvydas*.

Petitioner argues that his removal violates due process. *See* ECF No. 1 ¶¶ 64-71. Although Petitioner analyzes the due process question under the framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), *see* ECF No. 1 ¶¶ 67-70, the Supreme Court specifically addressed due process requirements after the initial removal period in *Zadvydas*, and therefore the Court should look to that decision to guide its analysis here.

In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) permits detention beyond the initial removal period only so long as the detention does not violate due process. The Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700-01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. However, 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 Government must respond with evidence sufficient to

rebut that showing." *Id.* at 701.

Since then, the Supreme Court has repeatedly adhered to six months as the presumptively reasonable period of detention under § 1231(a)(6). *See Arteaga-Martinez*, 596 U.S. at 586 ("The 'presumptively reasonable' detention period, the Court declared [in *Zadvydas*], was six months.") (Thomas, J., concurring); *Jennings v. Rodriguez*, 583 U.S. 281, 298-99 (2018) (explaining that the Court in *Zadvydas* had determined that while § 1231(a)(6) did not impose any "statutory limit on the length of permissible detention," that "six months is a presumptively reasonable period") (citing *Zadvydas*, 533 U.S. at 697, 701).

"*After that point*"—beyond six months—"if the alien 'provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,' the Government must . . . rebut that showing . . . ." *Guzman Chavez*, 594 U.S. at 529 (emphasis added, quoting *Zadvydas*, 533 U.S. at 701). In other words, *after* the presumptively reasonable detention period passes, the noncitizen can seek to show that his detention will be indefinite. The "onus is on the alien to 'provide[] good reason to believe'" there is no significant likelihood of removal in the reasonably foreseeable future "*before* 'the Government must respond with evidence sufficient to make that showing.'" *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added). In other words, *if* the noncitizen meets his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future, *then* the government's evidentiary obligation to show likelihood of removal is triggered.

Here, Petitioner's order of removal became administratively final on October 2, 2025, when he waived appeal. *See* Luquin Decl. ¶ 15; ECF No. 1-2 at 14 (waiving appeal); 8 C.F.R. § 1241.1(b) ("An order of removal . . . shall become final . . . [u]pon waiver of appeal by the respondent"). Petitioner filed this case five months after his order of removal became final. However, as of this filing, Petitioner has now been in custody six months after his order of removal became final.

Petitioner asserts that he cannot be removed to his native country, Cuba, because he has been granted withholding of removal. ECF No. 1 ¶ 7; ECF No. 1-2 at 12 § II.A. Respondents do not contest this point. He also asserts that he is not significantly likely to be removed to a third country in the reasonably foreseeable future. ECF No. 1 ¶¶ 8, 10-11. However, simply because removal has not yet occurred does not mean that removal is not significantly likely to occur in the reasonably foreseeable future.

Here, ICE served Petitioner with a notice of removal to Mexico. Luquin Decl. ¶ 20. Petitioner claimed fear of removal to Mexico, and USCIS conducted a screening interview and concluded that Petitioner did not establish that he qualified for relief from removal to Mexico. *Id.* ¶¶ 21-22. ICE continues to pursue Petitioner's removal and believes that his removal is significantly likely in the reasonably foreseeable future. *Id.* ¶¶ 19, 25-27.

ICE has successfully removed Cuban citizens to Mexico in recent months. *Id.* ¶ 26. For example, this Court recently adjudicated a habeas petition by a Cuban citizen who claimed that there was no significant likelihood of removal in the foreseeable future.

See Order at 1, 3-4, *Hernandez Montero v. Lyons*, No. 25-cv-3890-GPG (D. Colo. Feb. 10, 2026), ECF No. 17. The Court granted the habeas petition in part, reasoning that although facts "cast doubt" on ICE's ability to remove the petitioner, and as "unlikely as these" efforts to remove the petitioner might appear, the measures were nonetheless "recent." *Id.* at 4. The Court ordered ICE to remove or release the petitioner within 30 days. *Id.* at 5. Less than two weeks later, that petitioner's counsel reported to the Court that the petitioner had "been removed to Mexico." Motion to Withdraw Motion for Preliminary Injunction at 1, *Hernandez Montero*, No. 25-cv-3890-GPG (D. Colo. Feb. 23, 2026), ECF No. 21.

Here, the Court should deny the Petition, or, in the alternative, provide Respondents additional time to remove or release Petitioner. However, should the Court order Petitioner released, he should be subject to conditions to be set by ICE. *See* 8 U.S.C. § 1231(a)(6) ("if released, [the alien ordered removed] shall be subject to the terms of supervision in paragraph (3)"). Under 8 U.S.C. § 1231(a)(3), the Attorney General has the authority to issue regulations on terms of supervision for an alien released pending removal. ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700.

III. Petitioner has received post-order custody reviews.

In the alternative, Petitioner seeks an order directing Respondents to provide him with a custody review. ECF No. 1 ¶¶ 72-75. Here, no habeas relief is warranted,

because Respondents have reviewed Petitioner's custody. On December 17, 2025—within 90 days after Petitioner's order of removal became final—ICE conducted a custody review pursuant to 8 C.F.R. § 241.4 and determined that Petitioner was not eligible for release. *See* Luquin Decl. ¶ 19. Then, more recently, ICE provided notice to Petitioner that he would be interviewed for another review of his custody status. *Id.* ¶ 23. Last month, ICE conducted that interview, and the panel determined again that Petitioner was not eligible for release under 8 C.F.R. § 241.4(e). *Id.* ¶ 24. Accordingly, no relief is warranted with respect to Petitioner's custody review.

CONCLUSION

Respondents request that the Court deny the Petition.

Respectfully submitted on April 9, 2026.

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CERTIFICATE OF SERVICE

I certify that on April 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

Scott Brian Petiya, Esq.
Counsel for Petitioner

s/Thomas A. Isler
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