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,

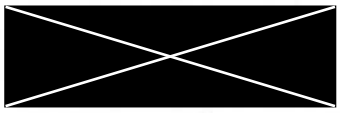
MARKWAYNE MULLIN, *in his official capacity* as Secretary, U.S. Department of Homeland Security; and

TODD BLANCHE, *in his official capacity* as Attorney General of the United States;

Respondents.

Case No. 1:26-cv-00844-GPG

AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF



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 approximately 10 months in total, and more than six months after the IJ's final order in his case. 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. The IJ's grant of Withholding of Removal to Petitioner is sufficient to demonstrate, pursuant to *Zadvydas*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Koca v. Noem*, No. 26-cv-00443-NYW, 2026 U.S. Dist. LEXIS 42444, at *5-*6 (D. Colo., Mar. 2, 2026) (good reason is shown when a detainee establishes that there are "either institutional barriers to repatriation or obstacles particular to his removal;" a grant of withholding of removal is a "particular individual barrier that creates a permanent impediment to removal to his home country" (internal quotations omitted).); *Zadvydas*, 533 U.S. at 701.

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

12. Respondents have notified Petitioner that they intend to remove him to Mexico. *See* Notice of Removal, Exhibit 5.[1] However, there is no indication that the government of Mexico has agreed to accept Petitioner, would grant Petitioner any legal status there, or would not itself remove him to Cuba, where his life or freedom would be threatened.

13. The District of Colorado has held that due process requires Respondents to "identify *and coordinate* with a third country to accept Petitioner's removal," and to release him if they do not do so. *Rodriguez Hernandez v. Noem*, No. 1:25-cv-04164-RMR, Doc. No. 9 at 7 (D. Colo. Mar. 10, 2026) (emphasis added). There is no indication that Respondents have coordinated with Mexico or any other country in Petitioner's case.

14. Petitioner also fears that his life or freedom would be threatened in Mexico, and, upon information and belief, has communicated that fear to ICE. The District of Colorado has held that "[I]f a noncitizen claims fear of removal to a designated third country, the Government must allow them to pursue withholding of removal through reopened removal proceedings before an immigration judge." *Rodriguez Hernandez*, No. 1:25-cv-04164-RMR, Doc. No. 9 at 6 (*quoting Emara v. Bondi,* No. C26-0116-KKE, 2026 U.S. Dist. LEXIS 21271, at *14 (W.D. Wash. Feb. 2, 2026) (citations omitted). Respondents have not allowed Petitioner to pursue this in regard to his fear of removal to Mexico.

15. Through this Petition, Mr. Troche Montoya asks this Court to find that Respondents 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.

[1] It should be noted that the Certificate of Service on the Notice of Removal ICE served to Petitioner is defective, as it lists the wrong name for Petitioner.

16. When a noncitizen is subject to an administratively final IJ order, is detained, but has not been removed from the United States, Due Process entitles him 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).
17. 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.
18. 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).
19. 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. Upon information and belief, he has received no notice in writing of the result of any review under 8 C.F.R. §§241.4 and 241.13, as required by 8 C.F.R. §241.4(k)(1)(i).

20. 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.

21. In the alternative, if the Court does not order Petitioner's immediate release, it should order that, within seven days, that Petitioner have a custody redetermination hearing before an IJ – the same type of hearing that is conducted for noncitizens with pending removal proceedings under 8 U.S.C. §1226(a) – in order to seek release on bond. The Ninth Circuit Court of Appeals has held that noncitizens detained under §1231(a)(6) are entitled to such a hearing, and "the same procedural safeguards accorded to aliens detained under §1226(a)," once the six month period established in *Zadvydas* has elapsed. *Diouf v. Napolitano*, 634 F.3d 1081, 1086, 1091-92 (9th Cir. 2011). If the Court orders such a hearing, it should also order that, at that hearing, the government bear the burden to prove, by clear and convincing evidence, that a petitioner is either a flight risk or a danger to the community, and that the IJ duly consider Petitioner's ability to pay when setting the conditions of bond and release. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87 (D. Colo. 2024); *Salazar v. Dedos*, 14 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *14-15 (D.N.M. Sept. 17, 2025); *See generally Abdi v. Nielsen*, 287 F. Supp. 3d 317 (W.D.N.Y. 2018); *Leslie v. Holder*, 865 F. Supp. 2d 627, 630 n. 1 (M.D. Penn. 2012).

CUSTODY

22. 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

23. 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*.
24. 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).
25. 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

26. 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.*
27. 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.

28. 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 six months after the IJ issued the final order in his Immigration Court proceedings.

29. Alternatively, this Court should grant the Petition because Petitioner's detention is in violation of his Due Process rights as, upon information and belief, Respondents have failed to notify him in writing of the results of any review they have conducted of Petitioner's custody under 8 C.F.R. §§241.4 and 241.13. *Misirbekov*, 796 F. Supp 3d at 439-40. The have also failed to allow him to pursue withholding of removal to Mexico through reopened removal proceedings before an IJ, or to seek release on bond in a custody redetermination hearing before an IJ. *Rodriguez Hernandez,* No. 1:25-cv-04164-RMR, Doc. No. 9 at 6; *Diouf*, 634 F.3d at 1086, 1091-92.

VENUE

30. 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

31. 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).

32. 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. A custody redetermination hearing would only be held if, as discussed herein, the Court orders it pursuant to *Diouf*, 634 F.3d at 1086, 1091-92.

33. 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).

34. 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 notify him in writing of the result of. *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

35. 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.

36. 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.

37. 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.

38. 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.

39. Respondent Markwayne Mullin is sued in his 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 Mullin is Petitioner's ultimate legal custodian.

40. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States. As Acting Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

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

42. 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).

43. 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).

44. 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).

45. 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.

46. 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.

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

48. Due Process also 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).

49. 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.

50. 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).

51. 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. *See* Exhibit 4.

52. 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.

53. The IJ's grant of Withholding of Removal to Petitioner is sufficient in itself to demonstrate, pursuant to *Zadvydas*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Koca v. Noem*, No. 26-cv-00443-NYW, 2026 U.S. Dist. LEXIS 42444, at *5-*6 (D. Colo., Mar. 2, 2026) (good reason is shown when a detainee establishes that there are "either institutional barriers to repatriation or obstacles particular to his removal;" a grant of withholding of removal is a "particular individual barrier that creates a permanent impediment to removal to his home country" (internal quotations omitted).); *Zadvydas*, 533 U.S. at 701.

54. Respondents have notified Petitioner that they intend to remove him to Mexico. *See* Notice of Removal, Exhibit * However, there is no indication that the government of Mexico has agreed to accept Petitioner, would grant Petitioner any legal status there, or would not itself remove him to Cuba, where his life or freedom would be threatened.

55. The District of Colorado has held that due process requires Respondents to "identify *and coordinate* with a third country to accept Petitioner's removal," and to release him if they do not do so. *Rodriguez Hernandez*, No. 1:25-cv-04164-RMR, Doc. No. 9 at 7 (emphasis added). There is no indication that Respondents have coordinated with Mexico or any other country in Petitioner's case. Therefore, as Petitioner's grant of Withholding of Removal shows that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, Respondents have not sufficiently rebutted that showing as required by *Zadvydas*. 533 U.S. at 701; *Koca*, 2026 U.S. Dist. LEXIS 42444, at *5-*6.

56. Accordingly, Petitioner's continued detention is unlawful under *Zadvydas* because he has been detained since June 2025, beyond six months after the IJ issued the final order in his

Immigration Court case, without release and without any expected end date to his detention; he has shown good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and Respondents have not rebutted that showing. 533 U.S. at 701.

57. 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).

58. Petitioner's continued detention without the opportunity for release, despite having been granted relief from removal by an IJ, is therefore unlawful.

59. The Ninth Circuit Court of Appeals has held that noncitizens detained under §1231(a)(6) are entitled to a custody redetermination hearing before an IJ – the same type of hearing that is conducted for noncitizens with pending removal proceedings under 8 U.S.C. §1226(a) – in order to seek release on bond, once the six month period established in *Zadvydas* has elapsed. *Diouf*, 634 F.3d at 1086, 1091-92. This period has elapsed in Petitioner's case. Accordingly, if this Court does not order Petitioner's immediate release, it should order that he have the same type of custody redetermination within seven days. If the Court orders such a hearing, it should also order that, at that hearing, the government bear the burden to prove, by clear and convincing evidence, that a petitioner is either a flight risk or a danger to the community, and that the IJ duly consider Petitioner's ability to pay when setting the conditions of bond and release. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87 (D. Colo. 2024); *Salazar v. Dedos*, 14 806 F.

Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *14-15 (D.N.M. Sept. 17, 2025); *See generally Abdi v. Nielsen*, 287 F. Supp. 3d 317; *Leslie v. Holder*, 865 F. Supp. 2d 627, 630 n. 1 ("the imposition of a [bond] which the agency knows cannot be met [is] tantamount to detention.").

STATEMENT OF FACTS

60. Petitioner is a citizen of Cuba.

61. Upon information and belief, Petitioner has resided in the U.S. since 2023 following his entry using the CBP One application.

62. Upon information and belief, Petitioner has never been convicted of any crime.

63. 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.

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

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

66. 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.*

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

68. 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. A custody redetermination hearing would only be held if, as discussed herein, the Court orders it pursuant to *Diouf*, 634 F.3d at 1086, 1091-92.

69. 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. 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).

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

COUNT I

Violation of Fifth Amendment Right to Due Process

71. Petitioner restates and re-alleges all paragraphs 1 to 70 as if fully set forth herein.

72. 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.

73. 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).

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

75. 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.").

76. 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.

77. 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.

78. 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, or providing him with a bond hearing, are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

79. Respondents' continued detention of Petitioner violates his due process rights as set forth in *Zadvydas*, as they have detained him for more than six months after the IJ's final order

in his removal proceedings, Petitioner's grant of Withholding of Removal shows that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and Respondents have not sufficiently rebutted that showing. 533 U.S. at 701; *Koca*, 2026 U.S. Dist. LEXIS 42444, at *5-*6.

80. Respondents are also violating Petitioner's due process rights by detaining him without the opportunity to pursue withholding of removal to Mexico through reopened removal proceedings before an IJ, or to seek release on bond in a custody redetermination hearing before an IJ. *Rodriguez Hernandez,* No. 1:25-cv-04164-RMR, Doc. No. 9 at 6; *Diouf*, 634 F.3d at 1086, 1091-92.

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

81. Petitioner restates and re-alleges all paragraphs 1 to 70 as if fully set forth herein.

82. 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).

83. 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).

84. The applicable 90-day period in Petitioner's case elapsed nearly two months ago, and 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). Respondents' failure to provide written notice of the results of 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;

(6) In the alternative, order that Petitioner have a custody redetermination hearing, under all the procedural safeguards of 8 U.S.C. §1226(a), before an IJ within seven days to allow him to seek release on bond, and that at that hearing, the

government bear the burden to prove, by clear and convincing evidence, that a petitioner is either a flight risk or a danger to the community, and that the IJ duly consider Petitioner's ability to pay when setting the conditions of bond and release;

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

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

Date: April 22, 2026

Respectfully Submitted,

/s/Scott Brian Petiya

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Attorney for the Petitioner

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 22st day of April, 2026.

/s/ Scott Brian Petiya. Esq.

CERTIFICATE OF SERVICE

I certify that on April 22, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by email:

thomas.isler@usdoj.gov

/s/ Scott Brian Petiya
Scott Brian Petiya