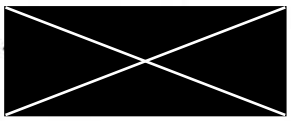
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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[1], *in his official capacity* as Secretary, U.S. Department of Homeland Security; and TODD BLANCHE,[2] *in his official capacity* as Acting Attorney General of the United States; Respondents.	Case No. 1:26-cv-00844-GPG PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF 

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO APPLICATION FOR WRIT OF HABEAS CORPUS (ECF No. 7)

INTRODUCTION

Petitioner, by and through undersigned counsel, submits this Petitioner's Reply to Respondent's Response to Application for Writ of Habeas Corpus. Respondents contend that

[1] Automatically substituted for Kristi Noem pursuant to Fed. R. Civ. P. 25(d).
[2] Automatically substituted for Pamela Jo Bondi pursuant to Fed. R. Civ. P. 25(d).

Petitioner should remain detained pursuant to 8 U.S.C. §1231(a)(6), despite having been granted Withholding of Removal under 8 U.S.C. §1231(b)(3) and despite the fact that it has now been more than six months since the alternate removal order issued by the Immigration Judge ("IJ") in his case became administratively final, exceeding the "presumptively reasonable" period of detention under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Respondents also contend that Petitioner's removal from the United States is "significantly likely in the reasonably foreseeable future," and contend that he may be removed to Mexico. *See* ECF No. 7 at 9.

It is Petitioner's position that there is no significant likelihood that the government will be able to effectuate his removal in the reasonably foreseeable future, and that pursuant to *Zadvydas* and 8 C.F.R. §241.13, his continued detention is no longer authorized by law and is in violation of his due process rights. Respondents do not contest that Petitioner, having been granted Withholding of Removal, cannot be removed to his native country, Cuba. ECF No. 7 at 9. This grant of Withholding of Removal in itself should be deemed sufficient to meet Petitioner's burden, under *Zadvydas*, to show "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); *Zadvydas*, 533 U.S. at 701. Respondents claim that they will likely be able to remove Petitioner to Mexico, but have provided no evidence 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. Without this, Respondents have not met their burden to rebut Petitioner's showing of no significant likelihood of removal. *Koca*, 2026 U.S. Dist. LEXIS 42444, at *7.

As Respondents note, Petitioner also fears that his life or freedom would be threatened in Mexico. They contend that they have provided Petitioner notice of their intent to remove him to Mexico, and considered his claims of fear that his life or freedom would be threatened there by referring him for an interview with a United States Citizenship and Immigration Services ("USCIS") officer, who determined that "Petitioner did not establish that he qualified for relief from removal to Mexico." ECF No. 7 at 4, 9. However, this USCIS interview is not sufficient to comply with Petitioner's due process rights or with 8 U.S.C. 1231(b)(3). "[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," not merely through what Respondents describe as a "screening interview" with USCIS. *Rodriguez Hernandez v. Noem*, No. 1:25-cv-04164-RMR, Doc. No. 9 at 6 (D. Colo. Mar. 10, 2026) (*quoting Emara v. Bondi,* No. C26-0116-KKE, 2026 U.S. Dist. LEXIS 21271, at *14 (W.D. Wash. Feb. 2, 2026) (citations omitted). As such, Respondents have not met the requirements of due process in Petitioner's case.

Since Petitioner's original Application for Writ of Habeas Corpus was filed on March 2, 2026, new decisions in the District of Colorado and other Federal Courts have been issued which affect Petitioner's case. *See Rodriguez Hernandez*, No. 1:25-cv-04164-RMR, Doc. No. 9 (D. Colo. Mar. 10, 2026); *Koca,* No. 26-cv-00443-NYW, 2026 U.S. Dist. LEXIS 42444, (D. Colo., Mar. 2, 2026); *Navarro v. Lyons*, No. 26-cv-10876-WGY, 2026 U.S. Dist. LEXIS 63719 (D. Mass. Mar. 25, 2026). The time elapsed from the issuance of the Immigration Judge's final order in Petitioner's removal proceedings on October 2, 2025 has also exceeded six months which both strengthens Petitioner's case for immediate release pursuant to *Zadvydas*, and allows him to seek an alternative remedy under *Diouf v. Napolitano*, 634 F.3d 1081, 1086, 1091-92 (9th Cir. 2011).

Therefore, Petitioner is filing, concurrently with this reply, an Amended Petition For Writ Of Habeas Corpus And Complaint For Declaratory And Injunctive Relief, pursuant to Fed. R. Civ. P. 25(a)(1)(B).

ARGUMENT

I. Petitioner's continued detention is no longer authorized by statute or regulation

Respondents contend that, despite having detained Petitioner for more than six months since the decision in his removal proceedings became final, and despite the IJ's grant of Withholding of Removal to Petitioner, they are authorized under 8 U.S.C. §1231(a)(6) to continue detaining him. ECF No. 7 at 6-7. This section authorized detention of a noncitizen who is inadmissible to the United States under 8 U.S.C. §1182, or who is determined to be a "risk to the community or unlikely to comply with the order of removal," beyond the 90-day period after an administratively final order described in §1231(a)(1). However, the regulations enacted under §1231(a)(6) require that noncitizens covered by it to be released in certain circumstances.

a. Regulations require release of Petitioner because there is no significant likelihood of removal in the reasonably foreseeable future

Under 8 C.F.R. §241.4, the government must review a detainee's 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). Even if the government determines that a detainee is not eligible for release under the §241.4 procedures, the detainee *must still be released* if there is "no significant

likelihood of removal in the reasonably foreseeable future." 8 C.F.R. §241.13(a), (b), and (g)(1) (emphasis added).

Respondents contend that they have reviewed Petitioner's case under 8 C.F.R. §241.4 and determined that he is not eligible for release under that section. ECF No. 7 at 3-4. However, as described above, this does not authorize them to continue detaining Petitioner because there is "no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. §241.13(a), (b), and (g)(1). The IJ's grant of Withholding of Removal under 8 U.S.C. §1231(b)(3), as Respondents concede, means they cannot remove him to Cuba. ECF No. 7 at 9. This is itself sufficient to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Koca*, 2026 U.S. Dist. LEXIS 42444, at *5-*6 (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).).

b. Respondents have not demonstrated a significant likelihood of Petitioner's removal in the reasonably foreseeable future

Respondents contend, however, that there is still a significant likelihood of Petitioner's removal because they have notified him of their intent to remove him to Mexico, and they claim that they have "successfully removed Cuban citizens to Mexico in recent months." ECF No. 7 at 9. However, Respondents have provided no evidence 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. A similar case now ongoing in the District of Massachusetts suggests that Respondents have provided no such evidence because

they have none. In the Massachusetts case, the government's Counsel also alleged that the government had recently successfully removed Cubans to Mexico when it could not remove them to Cuba, and when requested by the Court, promised to "produce the agreement between the United States and Mexico whereby Mexico agreed to accept Cuban nationals deported by the United States." *Navarro*, 2026 U.S. Dist. LEXIS 63719 at *4 (D. Mass. Mar. 25, 2026). However, the government then produced only its Counsel's statement that "Mexico has a standing (unwritten) agreement with the United States to accept Cuban Nationals for removal and that no travel document is necessary." *Id.*

The District of Massachusetts firmly rejected the government's contention that its claim of the existence of "some **unwritten** deal" with Mexico to accept Cubans removed from the U.S. was sufficient to show that the government was authorized to continue detaining a Cuban national who cannot be removed to Cuba. *Navarro*, 2026 U.S. Dist. LEXIS 63719 at *4. The Court noted that, "If such unwritten agreement exists, of course there will be written evidence of it - directives, briefing papers, internal correspondence, all the debris of a functioning bureaucracy," and yet the government had provided none of this. *Id.* at *6. Without such actual evidence, the Court could not examine any vital aspects of the alleged agreement – "When did it take effect? What are its provisions? What is its duration? Does it operate only with Mexico or with other sovereign states? Does it involve only Cuban nationals or, under this unwritten agreement, will Mexico take the nationals of other sovereign states?... is this agreement secret? If so, why?" *Id.* at *5-*6. The mere conclusory statement, backed only by an ICE officer's declaration, is not sufficient to show that the required significant likelihood of removal exists. *Id.* at *5 n. 4 (rejecting "Affidavits of ICE officials that go further than admissions of what the affiant knows of his own personal knowledge (hearsay won't do).)"

In this case, Respondents have produced no evidence of the type the District of Massachusetts sought in *Navarro*, or even asserted the existence of the supposed unwritten agreement with Mexico, but have merely asserted that ICE "believes that [Petitioner's] removal is significantly likely in the reasonably foreseeable future" because ICE has "successfully removed Cuban citizens to Mexico in recent months." ECF No. 7 at 9-10. As evidence for this contention, they have produced only an ICE officer's declaration, which the Court in *Navarro* rejected as insufficient. 2026 U.S. Dist. LEXIS 63719 at *5 n. 4. To show that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, Respondents must "identify *and coordinate* with a third country to accept Petitioner's removal." *Rodriguez Hernandez v. Noem*, No. 1:25-cv-04164-RMR, Doc. No. 9 at 7 (D. Colo. Mar. 10, 2026) (emphasis added). Respondents have not shown that they have coordinated with Mexico at all in Petitioner's case, or that Mexico has agreed to accept Petitioner.

For the above reasons, Petitioners have not shown that they are authorized to continue detaining Petitioner under 8 U.S.C. §1231(a)(6), as implemented by 8 C.F.R. §241.13, and the Court should order Petitioner's immediate release.

II. Petitioner's continued detention violates his Due Process rights

a. Under *Zadvydas*, it is the government's burden to demonstrate a significant likelihood of Petitioner's removal in the reasonably foreseeable future

Respondents contend that their continued detention of Petitioner does not violate his due process rights, as set forth in *Zadvydas*, 533 U.S. at 700-01. They describe the requirement in *Zadvydas* that after the "presumptively reasonable" detention period of six months from administratively final order has expired, a detainee must "[provide] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the

government is required to "respond with sufficient evidence to rebut that showing." ECF No. 7 at 7-8; 533 U.S. at 701. They contend that Petitioner has not made that showing. This is incorrect, because, as described above, the District of Colorado has held that a grant of Withholding of Removal by an IJ is sufficient in itself to meet the burden of showing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Koca*, 2026 U.S. Dist. LEXIS 42444, at *5-*6. As Respondents have not appealed the IJ's grant of Withholding to Petitioner, and do not contest that it prevents them from removing him to Cuba, this grant has shifted the burden to them "to present sufficient evidence to show that removal is likely." *Id.* at *7; ECF No. 7 at 9; ECF No. 1 Ex. 4.

b. Respondents have not met their burden under *Zadvydas*

Respondents have not presented sufficient evidence to rebut the showing, through the IJ's grant of withholding, that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. As described above, they have offered only the conclusory statements in their response and the accompanying declaration of an ICE officer, that "ICE has successfully removed Cuban citizens to Mexico in recent months." ECF No. 7 at 9; ECF No. 7 Ex. 1 at 5. This would seem to be based on the alleged "standing (unwritten) agreement" with Mexico referenced in *Navarro*, but just as in that case, Respondents have presented no evidence that that agreement actually exists. 2026 U.S. Dist. LEXIS 63719 at *4-*6. They have also presented no evidence that they have sought the agreement of the Mexican government to accept Petitioner specifically, or that the Mexican government has so agreed. Respondents have not demonstrated that Petitioner would be granted any legal status in Mexico, and crucially, have not demonstrated that the Mexican government would not itself remove Petitioner to Cuba after he arrived in Mexico, which would circumvent the IJ's grant of Withholding of Removal and

violate Petitioner's rights under 8 U.S.C. §1231(b)(3), endangering his life and freedom. 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). Respondents have not shown coordination with Mexico or any other country in Petitioner's case.

c. Respondent has not had a sufficient opportunity to contest removal to Mexico

Even if such coordination had taken place, Respondents have not afforded Petitioner a sufficient opportunity to show that his life or freedom would be threatened in Mexico, as he fears. ECF No. 7 at 9. 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,* 2026 U.S. Dist. LEXIS 21271, at *14 (citations omitted). Therefore, the "screening interview" with USCIS that Respondents state has been held in Petitioner's case is not sufficient to uphold his due process rights. *See* ECF No. 7 at 4.

As Respondents have not shown sufficient evidence, in rebuttal to the IJ's grant of Withholding of Removal, that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, they are no longer authorized to detain Petitioner under *Zadvydas.* 533 U.S. at 699-701. In their response, Respondents ask this Court, if it does not deny this Petition, to grant them "additional time to remove or release Petitioner." ECF No. 7 at 10. This would be wholly inappropriate because, as discussed above, Petitioner has been detained longer than the six months deemed "presumptively reasonable" in *Zadvydas*, has made the required

showing of good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and Respondents have not shown sufficient evidence that there is such a likelihood. 533 U.S. at 701; *Koca*, 2026 U.S. Dist. LEXIS 42444, at *5-6; *Navarro*, 2026 U.S. Dist. LEXIS 63719 at *4-*6. Respondents' time is up.

d. *Zadvydas* and *Mathews* require Petitioner's release

Finally, Respondents contend that Petitioner's due process rights in this matter should be addressed exclusively under *Zadvydas*, and not under *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See* ECF No. 7 at 7. Although, as described above, Petitioner's detention is still unlawful under *Zadvydas* alone, it should be noted that the District of Colorado, along with many other federal District Courts, have held that *Mathews* does apply in the context of immigration detention. *See Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, 2026 U.S. Dist. LEXIS 5493 (D. Colo. Jan. 12, 2026); *L.G. v. Choate*, 744 F. Supp. 3d. 1172, 1181(D. Colo. 2024). As Petitioner describes in Count I of his original petition and the concurrently filed Amended Petition, under the *Mathews v. Eldridge* framework, the balance of interests strongly favors his release. 424 U.S. 319, 334-335 (1976); ECF No. 1 at 13. Accordingly, this Court should order his immediate release.

For the above reasons, Respondents' continued detention of Petitioner is in violation of his Due Process rights, and this Court should order his immediate release.

In the alternative, the Court should order that Petitioner have a custody redetermination hearing before an IJ within seven days, for the reasons stated and with the parameters requested in the concurrently filed Amended Petition.

CONCLUSION

For the reasons discussed above, the Petitioner prays that this Court will grant his Prayer for Relief set forth in the concurrently filed Amended Petition For Writ Of Habeas Corpus And Complaint For Declaratory And Injunctive Relief.

Date: April 22, 2026

/s/ Scott Brian Petiya
SCOTT BRIAN PETIYA
Colorado Bar No. 48359
Monclova Law. P.C
1745 S Federal Blvd
Denver, CO 80219
(303) 974-5049
scott@monclovalaw.com

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