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**UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF FLORIDA**  
**ELEVENTH DIVISION**

**HERRERA NUNEZ, MICHAEL**

Petitioner,

v.

Kristi Noem, Secretary, U.S. Department  
of Homeland Security;

Todd M. Lyons,  
Acting Director,  
Immigration and Customs Enforcement  
(ICE)

Warden,  
Florida South Side Detention Center,

Respondents.

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**INTRODUCTION**

1. Petitioner, **MICHAEL HERRERA NUNEZ**, (A ) challenges Respondents' unlawful detention. Petitioner is currently in the physical custody of Respondents at Florida Soft-Side South (a/k/a "Alligator Alcatraz") in Miami, Florida.
2. Petitioner is a 40-year-old native and citizen of Cuba, born on  Petitioner has lived in the United States since childhood and is a lawful permanent resident of the United States.

3. Petitioner has prior criminal history in the United States but does not have a final order of removal. Those matters were resolved several years ago and did not result in any subsequent criminal convictions. Petitioner has since remained compliant with the law and has not incurred any additional criminal charges.
4. Petitioner is a lawful permanent resident of the United States and most recently renewed his lawful permanent resident card in November 2025. The successful renewal of his green card further confirmed his lawful status in the United States.
5. Relying on that lawful status, Petitioner briefly traveled to Cuba from February 1, 2026 through March 1, 2026 and returned to the United States through Miami International Airport, where he was taken into immigration custody by the Department of Homeland Security (“DHS”) at Miami International Airport and placed in immigration detention.
6. Since that time, Petitioner has been detained at Florida Soft-Side South (“Alligator Alcatraz”) under the custody and control of Respondents.
7. Prior to detaining Petitioner, Respondents did not provide adequate notice explaining the legal basis for his detention and did not afford Petitioner a meaningful opportunity to challenge the legality of his confinement before a neutral decisionmaker.
8. By detaining Petitioner without providing adequate procedural safeguards, Respondents have violated Petitioner’s constitutional rights under the Due Process Clause of the Fifth Amendment.
9. Respondents continue to detain Petitioner without providing a constitutionally sufficient process to justify his continued confinement. Unless this Court intervenes, Petitioner will remain detained without a meaningful opportunity to seek release.

10. Accordingly, this Court should grant the instant Petition for Writ of Habeas Corpus and order Petitioner's immediate release. See *E.A.T.-B v. United States*, 2025 WL 2402130, at \*6 (ordering immediate release where "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it occurs after the fact and cannot prevent an erroneous deprivation of liberty"). In the alternative, the Court should order the scheduling of a prompt individualized bond hearing before an Immigration Judge to afford Petitioner the procedural protections required by law.
11. Petitioner will suffer irreparable and immediate injury from continued unlawful detention unless this Court grants the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

### **JURISDICTION**

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
13. This Court has jurisdiction over this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, because Petitioner is currently in the custody of the United States.
14. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States.
15. This Court has jurisdiction pursuant to 28 U.S.C. § 1361, which authorizes district courts to compel an officer or employee of the United States, or an agency thereof, to perform a duty owed to the Petitioner.
16. The aid of this Court is further invoked under 28 U.S.C. §§ 2201 and 2202, which authorize this Court to grant declaratory relief.

17. This Court also has jurisdiction pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, which authorizes courts to set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### **VENUE**

18. Venue is proper in this Court because Petitioner is currently in custody of Immigration and Customs Enforcement at Florida Soft Side South in Miami, Florida, which is within the jurisdiction of this District.
19. Venue is also proper pursuant to 28 U.S.C. § 1391(e), as this action is brought against officers or employees of the United States and no real property is involved.
20. Respondents are the United States government and its agencies, including Immigration and Customs Enforcement and the Department of Homeland Security.

#### **EXHAUSTION**

21. Exhaustion of administrative remedies in immigration habeas proceedings is a prudential rather than jurisdictional requirement. See *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).
22. Courts may waive exhaustion where administrative remedies are inadequate or ineffective, where pursuit of administrative remedies would be futile, or where irreparable injury would result from requiring exhaustion. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).
23. Exhaustion is not required where Congress has not expressly mandated it. See *McCarthy*, 503 U.S. at 144 (“But where Congress has not clearly required exhaustion, sound judicial discretion governs.”).

24. Requiring Petitioner to pursue additional administrative remedies would be futile.

Petitioner is currently detained by ICE without a meaningful opportunity to challenge the legality of his continued detention. The administrative processes available to Petitioner do not provide an adequate or timely mechanism to address the constitutional violations raised in this Petition.

25. Courts have consistently recognized a futility exception to exhaustion requirements where further administrative review would not provide meaningful relief. See *Carr v. Saul*, 593 U.S. 83, 93 (2021).

26. Additionally, exhaustion should be excused because Petitioner raises substantial constitutional claims, including violations of the Fifth Amendment's Due Process Clause arising from his continued detention without adequate procedural safeguards.

27. Accordingly, exhaustion of administrative remedies should be excused in this case.

**REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO  
SHOW CAUSE**

28. Under 28 U.S.C. § 2243, this Court must either grant the petition for a writ of habeas corpus or issue an Order to Show Cause ("OSC") directing Respondents to respond, unless it appears from the petition that the petitioner is not entitled to relief. If an order to show cause 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." 28 U.S.C. § 2243.

29. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been described as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and

imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

30. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that this Court issue an Order to Show Cause directing Respondents to explain why Petitioner’s Petition for Writ of Habeas Corpus should not be granted and why Respondents should not be ordered to release Petitioner from unlawful detention. This action is brought pursuant to 28 U.S.C. §§ 2241 and 1331, the Suspension Clause of the United States Constitution, Article I, § 9, cl. 2, the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

31. Pending adjudication of this Petition, Petitioner respectfully requests that this Court issue an order enjoining Respondents from transferring Petitioner outside the jurisdiction of this Court, including outside the jurisdiction of the ICE Miami Field Office, Enforcement and Removal Operations (“ERO”), so that this Court may retain jurisdiction over Petitioner’s claims.

### **PARTIES**

32. Petitioner, **MICHAEL HERRERA NUNEZ**, is a native and citizen of Cuba, and is currently detained at Florida Soft Side South in Miami, Florida. He is in the custody, and under the direct control of the Respondents and their agents.

33. Respondent is the Warden of Florida Soft Side South, and they have immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent is a legal custodian of Petitioner.

34. Respondent, Todd M. Lyons, is sued in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent, Mr. Lyons, is a legal custodian of Petitioner and has authority to release them.

35. Respondent, Ms. Kristi Noem, is sued in their official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent, Ms. Noem, is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent, Ms. Noem, is a legal custodian of Petitioner.

#### **FACTUAL ALLEGATIONS**

36. Petitioner is a native and citizen of Cuba.

37. Petitioner was born on , and is currently forty (40) years old.

38. Petitioner entered the United States as a child in approximately 1989 or 1990 and has lived in the United States for most of his life.

39. Petitioner previously held lawful permanent resident status in the United States and most recently renewed his lawful permanent resident card in November 2025.

40. Relying on that lawful status and the recent renewal of his green card, Petitioner briefly traveled to Cuba from February 1, 2026, through March 1, 2026, and returned to the United States through Miami International Airport.

41. Upon returning to the United States through Miami International Airport on or about March 1, 2026, Petitioner was taken into custody by the Department of Homeland Security ("DHS") and placed in immigration detention.

42. Petitioner is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at Florida Soft-Side South (a/k/a “Alligator Alcatraz”) in Miami, Florida, within the jurisdiction of this Court.
43. Petitioner has prior criminal history in the United States. Those matters were resolved several years ago and resulted in probation and other non-custodial dispositions.
44. Petitioner has not been convicted of any additional offenses since the resolution of those matters.
45. Petitioner has not been provided with a meaningful opportunity to challenge the legality of his continued detention before a neutral decisionmaker.
46. Respondents have continued to detain Petitioner without providing adequate procedural safeguards to determine whether his detention is justified.
47. Petitioner maintains strong family and community ties in the United States, including close family members who are lawful permanent residents and United States citizens.
48. As a result of Respondents’ actions, Petitioner continues to suffer ongoing deprivation of liberty and other harms associated with immigration detention.
49. Absent intervention from this Court, Petitioner will remain detained without a meaningful opportunity to challenge the legality of his detention or seek release.

#### **LEGAL FRAMEWORK**

50. This Court has authority to review the legality of Petitioner’s detention pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals held in federal custody in violation of the Constitution or laws of the United States. Under § 2241, a federal court may examine whether detention is lawful, whether



statutory authority exists for the detention, and whether constitutional protections have been violated.

51. In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court confirmed that noncitizens may invoke habeas corpus to challenge immigration detention that allegedly exceeds statutory authority or violates constitutional rights.

52. Petitioner is entitled to procedural due process under the Fifth Amendment, which protects individuals from arbitrary deprivation of liberty by the federal government. Civil immigration detention implicates a significant liberty interest and therefore must comport with the requirements of due process.

53. The liberty interest is particularly strong where the individual is a lawful permanent resident who has lived in the United States for decades. Courts have repeatedly recognized that lawful permanent residents possess substantial constitutional protections against arbitrary detention and removal.

54. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process requires consideration of three factors:

- a. the private interest affected by the government action;
- b. the risk of erroneous deprivation of that interest under the procedures used and the probable value of additional procedural safeguards; and
- c. the government's interest, including the administrative burden that additional safeguards would entail.

55. These principles apply to immigration detention because such detention is civil rather than punitive. Accordingly, detention must be reasonably related to the government's legitimate

purposes of ensuring appearance at immigration proceedings and protecting the community.

56. The Supreme Court has recognized that immigration detention must remain limited and subject to constitutional constraints. See *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 432 (2018).

57. Consistent with these principles, courts reviewing immigration detention under 28 U.S.C. § 2241 examine whether the government has provided adequate procedural safeguards, including meaningful review of detention and an opportunity for the detainee to challenge the legality of continued confinement before a neutral decisionmaker.

58. In this case, Petitioner has been detained by the Department of Homeland Security without a meaningful opportunity to challenge the legality of his continued detention before a neutral decisionmaker.

59. Respondents have continued Petitioner's detention without providing an individualized determination of whether he poses a flight risk or a danger to the community, and without affording Petitioner an opportunity to contest that determination.

60. Petitioner's detention therefore presents a significant risk of erroneous deprivation of liberty under the *Mathews* framework because the procedures employed by Respondents do not provide a meaningful opportunity to challenge continued detention.

61. Courts have recognized that detention which lacks adequate procedural safeguards or statutory justification may violate due process and may be remedied through habeas corpus relief. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

62. Accordingly, because Respondents have continued to detain Petitioner without providing a constitutionally adequate process to justify that detention, the detention violates the Due Process Clause of the Fifth Amendment.

63. This Court therefore has authority to grant habeas relief, including ordering Petitioner's immediate release or directing that a prompt individualized bond hearing be conducted before an Immigration Judge consistent with due process.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE: Violation of the Fifth Amendment Due Process Clause (Unlawful Civil Immigration Detention)**

64. Petitioner realleges and incorporates by reference paragraphs 1 through 63 as though fully set forth herein.

65. The Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of liberty without due process of law.

66. Immigration detention is civil in nature and therefore must remain reasonably related to the government's legitimate purposes of ensuring appearance at immigration proceedings and protecting the community.

67. Petitioner is currently detained by the Department of Homeland Security ("DHS") without being afforded a meaningful opportunity to challenge the legality of his continued detention before a neutral decisionmaker.

68. Respondents have continued Petitioner's detention without providing adequate procedural safeguards, including an individualized determination of whether Petitioner poses a flight risk or danger to the community.

69. The procedures used by Respondents create a substantial risk of erroneous deprivation of Petitioner's liberty interests.

70. Because Petitioner's detention has been imposed and maintained without adequate procedural protection, Respondents' actions violate the Due Process Clause of the Fifth Amendment.

71. Petitioner is therefore entitled to habeas relief, including immediate release from detention or, at a minimum, a prompt individualized bond hearing before an Immigration Judge.

**COUNT TWO: Detention Without Adequate Statutory Authority**

72. Petitioner realleges and incorporates by reference paragraphs 1 through 70 as though fully set forth herein.

73. Immigration detention must be authorized by statute and implemented in a manner consistent with constitutional limitations.

74. Respondents have continued Petitioner's detention without demonstrating that his continued confinement is authorized under the applicable provisions of the Immigration and Nationality Act ("INA").

75. Petitioner's prior criminal history does not automatically subject him to mandatory detention, and Respondents have not demonstrated that Petitioner is subject to detention without an individualized custody determination.

76. In the absence of a valid statutory basis for continued detention, Respondents' actions exceed their lawful authority under the INA.

77. Detention without proper statutory authority is unlawful and subject to challenge through a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

**COUNT THREE: Unconstitutional prolonged detention**

78. Petitioner realleges and incorporates by reference paragraphs 1 through 76 as though fully set forth herein.
79. Civil immigration detention may not become indefinite, arbitrary, or punitive.
80. The Constitution requires that immigration detention remain reasonably related to its civil purposes and subject to meaningful procedural safeguards.
81. Respondents have continued to detain Petitioner without providing meaningful review of the necessity of detention and without affording Petitioner an opportunity to challenge the legality of his continued confinement.
82. Absent judicial intervention, Petitioner faces continued and potentially indefinite detention without meaningful procedural protections.
83. Federal courts have authority under 28 U.S.C. § 2241 to remedy unconstitutional immigration detention.
84. Petitioner therefore seeks habeas relief requiring Respondents to immediately release him from detention or, in the alternative, provide a prompt individualized bond hearing before an Immigration Judge.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

1. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241;
2. Issue an Order to Show Cause requiring Respondents to respond within three (3) days why this Petition should not be granted, as contemplated by 28 U.S.C. § 2243;

3. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action, or in the alternative require Respondents to provide Petitioner and his counsel advance written notice prior to any transfer;
4. Issue a Writ of Habeas Corpus:
  - a. Ordering Respondents to immediately release Petitioner from detention because his continued confinement violates the Constitution and laws of the United States; or
  - b. In the alternative, order Respondents to provide Petitioner with a prompt individualized bond hearing before an Immigration Judge, within five (5) days of this Court's order, at which the government must justify continued detention;
  - c. Declare that Petitioner's continued detention without adequate procedural safeguards violates the Due Process Clause of the Fifth Amendment;
5. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision of law;
6. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 6 of March, 2026,



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*Counsel for the Respondent*

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

I represent Petitioner, MICHAEL HERRERA NUNEZ, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

**Dated this 6 day of March, 2026.**

**VICTORIA E. GALAN, ESQ.**

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**Attorney for Petitioner**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ELEVENTH DIVISION**

**HERRERA NUNEZ, MICHAEL**

Petitioner,

V.

Kristi Noem, Secretary, U.S. Department  
of Homeland Security;

Todd M. Lyons,  
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Case No. \_\_\_\_\_

# PETITION FOR WRIT OF HABEAS CORPUS

## EXHIBIT LIST

Exhibit A – Passport / ID

Exhibit B – Criminal Charge Documentation

Exhibit C – ICE Detention Locator



### CERTIFICATE OF SERVICE

On the 6<sup>th</sup> day of March 2026, I, Victoria E. Galan, Esq., the undersigned, served via certified U.S. Mail, the attached **Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241**, on each person/entity listed below addressed as follows:

Civil Clerk  
United States Attorney's Office  
District of Florida  
99 NE 4th St, Miami, FL 33132

Florida Soft Side South Detention Facility  
54575 Tamiami Trail E  
Ochopee, FL 34141

Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Mail Stop 0485 Washington, DC 20528



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*Counsel for the Respondent*