UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Carlos Jorge Barrios Espinosa

Petitioner,

v.

Garrett J. RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela J. BONDI, U.S. Attorney General, Department of Justice; Todd LYONS, Acting Director, Immigration and Customs Enforcement; WARDEN of Florida Soft Side South Detention Center in Ochopee, Florida

Respondents.

Case No. 2:26-cv-695

Petition for Writ of Habeas Corpus and Order to Show Cause Within Three Days

INTRODUCTION

1. Petitioner Carlos Jorge Barrios Espinosa ("Petitioner") respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents.

2. Petitioner is a 47-year-old citizen of Cuba who has lived in the United States since the age of 18. Petitioner entered the United States as a

refugee in 1997. In December 2004, Petitioner was ordered removed to Cuba based on a 1999 criminal conviction. After being ordered removed, Petitioner spent around three (3) months in immigration custody while Immigration and Customs Enforcement ("ICE") tried and failed to remove him to Cuba. Finding that removal was not reasonably foreseeable, ICE released Petitioner from detention around April 2005 on an order of supervision.

3. Since his release, Petitioner committed himself to living a law-abiding and productive life. He has been consistently employed and providing emotional and financial support to his two U.S. citizen children, who he co-parents with his ex-wife.

4. Despite more than 20 years without any new convictions, in early November 2025, ICE abruptly re-detained Petitioner as he was leaving his regular sexual offender registration appointment at 1701 NW 87th Avenue, Ste. 100, Doral, FL 33172. As he was exiting the building, ICE agents arrested and detained him and placed him into immigration custody. The ICE agents did not tell him why his order of supervision was revoked or why they were re-detaining him. To date, Petitioner has not received an informal interview to respond to any reasons ICE had to revoke his order of supervision and re-detain him.

5. Petitioner is presently detained at the Florida Soft Side South Center. He has been moved across state lines countless times since February

21, 2026, only to be returned to the same initial facility. For most of that time, he did not appear on the ICE Detainee Locator. Even more, on two separate occasions, Respondents informed undersigned counsel that Respondent has been removed. Petitioner's current detention and Respondents' misinformation regarding his whereabouts have caused severe suffering to his two U.S. citizen children who are deeply worried for his mental and physical health. Even more, without their father, they have lost a considerable amount of emotional and financial support. To date, Petitioner has spent a cumulative seven (7) months in immigration custody during ICE's unsuccessful attempts to remove him from the country he has called home since 1997.

6. Petitioner files this habeas petition to seek release from ICE custody because Petitioner's removal is not reasonably foreseeable and because ICE's revocation of Petitioner's supervised release violated governing regulations and Petitioner's due process rights.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101.

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Middle District of Florida, the judicial district in which Petitioner currently is detained. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

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

10. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

11. Petitioner Carlos Jorge Barrios Espinosa is a citizen of Cuba who has resided in the United States for approximately 29 years. Prior to Petitioner's current detention on or about November 6, 2025, he was residing in Miami, Florida. Petitioner is currently detained at Florida Soft Side South Detention Center in Ochopee, Florida.

12. Respondent Garrett J. Ripa is the ICE Field Office Director for Enforcement and Removal Operations ("ERO") for the State of Florida, Puerto Rico, and the U.S. Virgin Islands, which includes Moore Haven, Florida. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice ("DOJ"), of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. She is sued in her official capacity.

15. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

16. Respondent Warden of Florida Soft Side South Detention Center is the Warden where Petitioner is currently detained. He is an immediate custodian of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

17. Petitioner is a native and citizen of Cuba. **Ex. 1**, Cuban Passport. He was paroled into the United States on January 16, 1997, as a conditionally admitted refugee. He has resided in the United States continuously since his entry in 1997. **Ex. 2**, Notice to Appear.

18. In September 2003, Petitioner was arrested and detained by immigration officials and placed in removal proceedings. On February 23, 2004, Petitioner was ordered removed from the United States based on a 1999 criminal conviction. **Ex. 3**, Removal Order. Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). **Ex. 4**, BIA Briefing Schedule. On October 29, 2004, the BIA remanded the case back to the Newark Immigration Court. On December 30, 2004, the Immigration Judge reaffirmed

its prior decision and Petitioner's removal order became final. **Ex. 5**, EOIR Automated Case Information.

19. Around April 2005, ICE released Petitioner under an order of supervision because it was unable to execute his removal during the 90-day period prescribed by law. Since ICE released Petitioner, he has committed to living a law-abiding life and supporting his family. He has also been regularly registering in person as a convicted sexual offender as required by law. No circumstances have changed that make Petitioner a flight risk or danger to the community.

20. Petitioner's entire immediate family resides in the United States. Petitioner has two U.S. citizen children who he co-parents with his ex-wife. Petitioner is extremely close to his family, and they count on him for physical, emotional, and financial support.

21. On November 6, 2025, Petitioner was leaving his regular sexual offender registration appointment at 1701 NW 87th Avenue, Ste. 100, Doral, FL 33172 when ICE agents approached him, identified him by name, and took him into immigration custody. Petitioner was first taken to the Miramar ICE-ERO Center for processing and was then transferred to Florida Soft Side South Detention Center the same day.

22. Upon information and belief, at no time prior to or following Petitioner's arrest did ICE provide him with written notice of the revocation of his release, a reason for the revocation, or any interview to address it.

23. On November 14, 2025, Petitioner, through his criminal attorney Todd D. Palumbo, filed a Motion for Post-Conviction Relief. **Ex. 6**, NJ Court Public Access Report. This petition alleges that Petitioner was affirmatively misled regarding the immigration consequences of his guilty plea and that Petitioner's plea was not voluntary. Oral argument on this motion is scheduled for March 13, 2026. If post-conviction relief is granted and his conviction is vacated, Petitioner plans to file a motion to reopen based on the vacatur.

24. Since undersigned counsel was retained by Petitioner and entered her representation via the ICE EROeFile portal, Petitioner has been moved across state lines numerous times. **Ex. 7**, ICE Detainee Transfer Notifications. On February 21, 2026, Petitioner was transferred to Winn Correctional Facility in Winnfield, Louisiana. Then, on March 7, 2026, he was transferred to Florence Service Processing Center in Florence, Arizona. On March 9, 2026, he was transferred to Adams County Correctional Center in Natchez, Mississippi. Finally, on March 10, 2026, he was returned back to Florida Soft Side South Detention Center, where he remains detained today. **Ex. 8**, ICE Detainee Locator, Dated March 12, 2026.

25. For most of the time he was transferred, his location remained unknown as he did not appear on the ICE Detainee Locator and ICE/ERO Miami did not inform me of his whereabouts. Instead, on two separate occasions, undersigned counsel received an email response stating that Petitioner had been removed. **Ex. 9**, Email Correspondence with ICE/ERO Miami. This information was incorrect and misleading as Petitioner called his family to let them know that he was still in the United States.

LEGAL FRAMEWORK

I. Post-Removal Order Detention is Constitutionally Suspect and not Authorized by Statute where Removal is not Reasonably Foreseeable

32. The INA provides that after a removal order becomes final, the government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). During this 90-day initial removal period, the government "shall" detain the noncitizen. *Id.* § 1231(a)(2)(A). 8 U.S.C. § 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—beyond the initial 90-day removal period.

33. In *Zadvydas v. Davis,* the Court addressed the question of how long DHS can detain a noncitizen pursuant to § 1231(a)(6). 533 U.S. 678, 682 (2001). The Court first highlighted that "[f]reedom from . . . government

custody . . . lies at the heart of the liberty that [the Due Process] Clause protects" and that civil detention violates the Due Process Clause outside of "certain special and 'narrow' nonpunitive 'circumstances' . . . where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (internal citations omitted). Under the principle of constitutional avoidance, the *Zadvydas* Court then rejected the government's position that § 1231(a)(6) permits indefinite civil detention and determined that § 1231(a)(6) no longer authorizes detention when "removal is not reasonably foreseeable." *Id.* at 699.

34. The Court went on to establish a framework for future challenges to § 1231(a)(6) detention. "[F]or the sake of uniform administration in the federal courts" and because "Congress previously doubted the constitutionality of detention for more than six months," the Court found that detention was "presumptively reasonable" for the first six months of post-removal order detention. *Id.* at 700-01. When the "presumptively reasonable" six-month period ends, noncitizens seeking release from custody bear the initial burden of providing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Once that initial showing is made, the burden shifts to DHS to respond with sufficient rebuttal evidence. *See id.* The Court further held that "for detention to remain

reasonable, as the period of [post-order] confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

35. Courts consider the cumulative length of post-order detention when determining if post-order detention exceeds the six-month "presumptively reasonable" period. *Sardinas v. Noem*, No. 2:26-CV-00067, 2025 WL 232405, at *3 (M.D. Fla. Jan. 29, 2026) (stating that assuming that the six-month presumptively reasonable period of detention resets each time a noncitizen is detained "would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days"); *Gonzalez v. Noem*, No. 2:25-CV-01176-SPC-NPM, 2026 WL 44818, at *3 (M.D. Fla. Jan. 7, 2026); *Rubinshteyn v. Mordant*, No. 2:26-CV-00279-SPC-NPM, 2026 WL 507717, at *3 (M.D. Fla. Feb. 24, 2026).

II. Revocation of Post-Removal Order Release Must Comport with the Governing Regulations

36. Two regulations, 8 C.F.R. § 241.4 (2026) and 8 C.F.R. § 241.13 (2026), govern release and re-detention following a final order of removal. Section 241.4 creates a system of custody reviews for noncitizens that ICE detains beyond the 90-day initial removal period. ICE may grant release under § 241.4 if the noncitizen demonstrates that "his or her release 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 [noncitizen's] removal from the United

States." § 241.4(d)(1). Section 241.13 creates "special review procedures" where the noncitizen "has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." § 241.13(a). These regulations provide that ICE may re-detain a noncitizen only for specified reasons and following specified procedures, laid out in detail below. See §§ 241.4(l), 241.13(i).

37. Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). Courts have routinely found that, when ICE fails to follow its own regulations in revoking release, detention is unlawful and the petitioner must be released. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) ("In sum, because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release."); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025) (ordering release because ICE violated 8 C.F.R. § 241.13, its own regulations).

A. <u>Required notice and opportunity to respond</u>

38. The regulations require that DHS notify the noncitizen "of the reasons for revocation of his or her release [upon revocation]." 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). Language in a revocation notice that "summarily

asserts that changed circumstances render [the noncitizen's] removal from the U.S. significantly likely in the reasonably foreseeable future" does "not satisfy the Government's obligation to provide the 'reasons' why" the petitioner was re-detained. *Roble v. Bondi*, 803 F. Supp. 3d 766, 771-72 (D. Minn. 2025); *see also Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at *2 (S.D. Cal. Sept. 30, 2025). DHS is also required to conduct an "initial informal interview promptly after" the noncitizen's "return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). This interview must happen shortly after re-detention. *See, e.g., Constantinovici v. Bondi*, F. Supp. 3d, No. 3:25-cv-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (holding that ICE providing an interview six weeks after re-detention cannot reasonably be construed as a "prompt" interview).

B. Requirements outlining when re-detention is warranted

39. The regulations also require that ICE have a proper basis for re-detention, namely that the individual violated the conditions of their release, 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or—where the noncitizen was previously released because removal was not foreseeable—that circumstances have changed such that there is now a "significant likelihood" that the individual can be "removed in the reasonably foreseeable future." § 241.13(i)(2).

40. Notably, under "ICE's own regulations," ICE bears the burden to establish "changed circumstances that make removal significantly likely in the reasonably foreseeable future." *Sun v. Noem*, No. 3:25-CV-02433-CAB-MMP, 2025 WL 2800037, at *2 (S.D. Cal. Sept. 30, 2025) (citing § 241.13(i)(2)); *see also Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025). DHS simply repeating the language of the regulations and making conclusory statements that re-detention is warranted because circumstances have changed such that removal is now reasonably foreseeable is insufficient. *See, e.g. Nguyen*, 788 F. Supp. 3d at 150-52; *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *6 (E.D. Cal. Aug. 20, 2025). Courts have also repeatedly held that the fact that a travel document request is pending is insufficient to establish changed circumstances. *See, e.g., Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025).

C. <u>Requirements regarding who can make the decision to re-detain</u>

41. The regulations also permit only certain officials to revoke a noncitizen's release: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160-61 (citing 8 C.F.R. § 241.4(l)(2) and § 1.2 and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field

office director, or another local ICE official with delegated authority—rather than the ICE Executive Associate Director—intend to revoke release, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2).

III. Revocation of Post-Removal Order Release Must Also Comport with Constitutional Due Process

42. Beyond the procedural requirements laid out in 8 C.F.R. §§ 241.13(i) and 241.4(l), the Due Process Clause further constrains ICE's ability to re-detain a noncitizen who was previously released from immigration custody after receiving a final order of removal. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (the "government's discretion to incarcerate noncitizens is always constrained by the requirements of due process"). Procedural due process requires that a noncitizen's detention be accompanied by strong "procedural protections," *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001), such as a hearing before a neutral adjudicator to determine whether detention is warranted. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Substantive due process requires that a noncitizen's detention bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. *See Zadvydas*, 533 U.S. at 690-91.

A. Procedural due process requirements

43. *Mathews v. Eldridge* instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. *Mathews*, 424 U.S. at 333.

44. It is well-established that all people within the U.S., including noncitizens subject to a final order of removal, possess a liberty interest in their physical freedom. *See Zadvydas*, 533 U.S. at 693; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144. Supreme Court precedent also makes clear that individuals whose physical freedom is qualified in some way nonetheless have a liberty interest that "is valuable and must be seen as within the protection" of the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

45. Once a protected liberty interest exists, courts then assess what process is due, using the flexible balancing test set forth in *Mathews*, 424 U.S. at 335. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its

impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Morrissey*, 408 U.S. at 481-82.

46. Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports with due process in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide." *Id.* at 128. Further, only where "one of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing" an erroneous deprivation can the government avoid providing pre-deprivation process. *Id.; see also Lynch v. Baxley*, 744 F.2d 1452, 1457-62 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not be held in jail pending the determination as to whether they can ultimately be recommitted).

B. Substantive due process requirements

47. Substantive due process prohibits civil detention that is punitive in purpose or in effect. *See Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004). The only two permissible purposes for civil immigration detention are to prevent flight and to protect the community from danger. *See Zadvydas*, 533 U.S. at 690-91. Thus, where immigration detention is "excessive in relation" to

the government's permissible purpose of reducing risk of flight or danger to the community, or any such risk could be adequately mitigated by "alternative and less harsh methods," detention violates substantive due process. *See Jones*, 393 F.3d at 934-35; *Zadvydas*, 533 U.S. at 690-91.

CLAIMS FOR RELIEF

Count One
Violation of 8 U.S.C. § 1231(a)(6) and the Fifth Amendment Due Process Clause

48. Petitioner realleges all paragraphs above as if fully set forth here.

49. Respondents' detention of Petitioner violates 8 U.S.C. § 1231(a)(6) and Petitioner's rights under the Due Process Clause of the Fifth Amendment of the U.S. Constitution because Petitioner's removal is not reasonably foreseeable. Petitioner has been subjected to a total of seven months of post-order detention and is therefore beyond the six-month period of presumptively reasonable post-order detention. *See Zadvydas v Davis*, 533 U.S. 678, 701 (2001). Petitioner has established "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and Respondents have not and cannot rebut that showing. *See Zadvydas*, 533 U.S. at 701. There is no evidence that Cuba has or will issue travel documents for Petitioner or that Petitioner is even eligible to be removed to Cuba.

Additionally, Respondents have already tried and failed to remove Petitioner from the United States.

50. Under similar circumstances, courts in this District have repeatedly found that removal is not reasonably foreseeable and that detention is therefore no longer authorized by § 1231(a)(6). *Sardinas v. Noem*, No. 2:26-CV-00067, 2025 WL 232405, at *3 (M.D. Fla. Jan. 29, 2026); *Gonzalez v. Noem*, No. 2:25-CV-01176-SPC-NPM, 2026 WL 44818, at *3 (M.D. Fla. Jan. 7, 2026); *Rubinshteyn v. Mordant*, No. 2:26-CV-00279-SPC-NPM, 2026 WL 507717, at *3 (M.D. Fla. Feb. 24, 2026). "The standard for lawful continued detention is not that the government simply continue 'good faith efforts to effectuate [removal],' nor that a noncitizen must show that removal is impossible." *Bostock*, 2025 WL 2841022, at *4 (citing *Zadvydas*, 533 U.S. at 702).

51. Accordingly, Respondent cannot meet their burden to show that removal is reasonably foreseeable, Petitioner's detention is no longer authorized under § 1231(a)(6), and this Court should order Petitioner's immediate release.

COUNT TWO
Re-detention in violation of the governing regulations

52. Petitioner realleges all paragraphs above as if fully set forth here.

53. Respondents' re-detention of Petitioner is governed by 8 C.F.R. § 241.13(i) and violated the requirements of that regulation, as detailed below.

54. First, ICE failed to notify Petitioner of "the reasons for revocation" of release and failed to provide Petitioner with an opportunity to respond to those reasons at a prompt, informal interview, in clear violation of the governing regulation. *See* § 241.13(i)(3); *see also* § 241.4(l)(1). ICE's failure to provide Petitioner with a prompt interview and an opportunity to respond to ICE's stated reasons for revocation is reason enough to find Petitioner's detention unlawful. *See, e.g., Phan v. Noem*, No. 3:25-cv-02422-RBM-MSB, 2025 WL 2898977 at *3-4 (S.D. Cal. Oct. 10, 2025); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778 at *5 (E.D. Cal. Aug. 20, 2025).

55. Second, re-detention is not warranted under 8 C.F.R. § 241.13(i)(2) because ICE has failed to meet its burden of establishing that circumstances have changed such that there is now a "significant likelihood" that the individual can be "removed in the reasonably foreseeable future." *See* § 241.13(i)(2); *Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at *2-3. All of ICE's communications regarding Petitioner's re-detention demonstrate that ICE does not have a travel document for Petitioner. A pending travel document request is insufficient to establish changed circumstances justifying re-detention. *See Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *6-7 (Nov. 6, 2025 E.D. Cal.).

56. Because government agencies are required to follow their own regulations, Respondents' re-detention of Petitioner in violation of the governing regulations was unlawful and this Court should order Petitioner's immediate release. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

Count Three
Re-detention in violation of the Fifth Amendment's procedural due process protections

57. Petitioner realleges all paragraphs above as if fully set forth here.

58. Respondents' re-detention of Petitioner violates his procedural due process rights under the Fifth Amendment's Due Process Clause.

59. Petitioner had a protected liberty interest in their 20-year-long supervised release from immigration custody. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *7 (E.D. Cal. Aug. 20, 2025) (government concedes that an individual with a final order of removal had a protected liberty interest in continued conditional release from ICE custody). Thus, the Court should apply the *Mathews* balancing test to determine what process is due.

60. Turning to the first *Mathews* factor, Petitioner has a profound private interest in remaining free from detention. *See Zadvydas*, 533 U.S. at 690. Petitioner's private interest in freedom from ICE custody is particularly

weighty given the negative impacts that detention is having on him and his family and Respondents' misinformation regarding his whereabouts.

61. As to the second *Mathews* factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, (1) the statute specifies the limited number of reasons why an order of supervision may be revoked; and (2) the regulations specify who may lawfully revoke the order and the procedures that must be followed when doing so. Here, Respondents violated those laws when they detained Petitioner without notice of the revocation of his release or an opportunity to raise any challenges to the revocation. Additionally, the existing procedural protections found in ICE's regulations are woefully insufficient to reduce the risk of erroneous detention because the regulations allow ICE to make a unilateral decision to revoke release. 8 C.F.R. §§ 241.4(l)(2), 241.13(i). Only a pre-detention hearing would ensure that a neutral adjudicator reviews Petitioner's evidence and decides whether they are neither a danger or a flight risk, thus reducing the risk of erroneous detention.

62. The third factor, the government's interest, also favors Petitioner. When the government ignores law that ensures notice and an opportunity to respond to a person at risk of revocation of release, it is more likely to waste limited financial and administrative resources on the unnecessary detention of

people who are neither flight risks nor dangerous and who ICE previously found it appropriate to release back into the community. Further, courts have held that the "government's interest in re-detaining noncitizens previously released without a hearing is low." *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025). Providing such a hearing will impose a de minimis, if any, burden on the government, *see Singh v. Barr*, 400 F. Supp. 3d 1005, 1021-22 (S.D. Cal. 2019) and would be far less costly and burdensome for the government than keeping Petitioner detained. In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations and quotations omitted).

63. For these reasons, revoking Petitioner's order of supervision without providing notice, a meaningful opportunity to respond, or a pre-deprivation hearing violated his procedural due process rights under the Fifth Amendment to the U.S. Constitution.

Count Four
Re-detention in violation of the Fifth Amendment's substantive due process protections

64. Petitioner realleges all paragraphs above as if fully set forth here.

65. Respondents' re-detention of Petitioner violates Petitioner's substantive due process rights under the Fifth Amendment's Due Process

Clause. The only two permissible purposes for civil immigration detention are to prevent flight and to protect the community from danger. *See Zadvydas*, 533 U.S. at 690-91. Respondents cannot reasonably assert that Petitioner—who was released on an order of supervision and has been living in the community for 20 years without any new convictions—now poses a risk of flight or danger.

66. Importantly, Respondents' sole possible basis for detaining Petitioner is that it may do so in order to remove him. However, as mentioned above, despite their multiple attempts, Respondents have not been able to remove Petitioner and there is not a significant likelihood that he may be removed in the reasonably foreseeable future.

67. Thus, because Petitioner's immigration detention is "excessive in relation" to the government's permissible purpose of reducing risk of flight or danger to the community, substantive due process requires that Petitioner be released from detention. *Zadvydas*, 533 U.S. at 690-91.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Declare that Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment and the INA and implementing regulations;

e. Order Respondents to immediately release Petitioner from custody under the conditions of Petitioner's prior supervised release;

f. Award Petitioner costs and reasonable attorneys' fees; and

g. Grant any other and further relief that this Court may deem just and proper.

DATED this 12th of March, 2026.

Respectfully submitted,

<u>/s/ Juliana M. Lopez</u>
Juliana M. Lopez, Esq.
Florida Bar Number: 1050003
Cordero & Associates, P.A.
800 S. Douglas Road, Ste. 350
Coral Gables, FL 33134
Tel: (305) 777-2677
Email: jlopez@corderoassociates.com
Attorney for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 12th of March, 2026.

/s/ Juliana M. Lopez
Juliana M. Lopez, Esq.
Florida Bar Number: 1050003
Cordero & Associates, P.A.
800 S. Douglas Road, Ste. 350
Coral Gables, FL 33134
Tel: (305) 777-2677
Email: jlopez@corderoassociates.com
Attorney for Petitioner