UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

JOSE ANTONIO SALGUERIO-GONZALEZ Petitioner, v. **JASON STREEVAL**, Warden of Stewart Detention Center; **GEORGE STERLING,** Field Office Director of Enforcement and Removal Operations, Atlanta Field Office (ERO Atlanta); **TODD M. LYONS,** Senior Official Performing the Duties of Director, Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security (DHS); and Respondents.	**Case No.4:26-CV-460** **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR HABEAS CORPUS

COMES NOW, Jose Antonio Salguerio Gonzalez (hereinafter "Petitioner"), who petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C.S. § 2241, to remedy his indefinite detention by Respondents. Pursuant to 28 U.S.C. § 2243, Petitioner

respectfully requests this Court immediately order Respondents to file a Return within three days absent good cause for additional time. An expedited timeline is reasonable in this case because it presents a pure question of law, and every day this case is pending, Petitioner continues to be unlawfully deprived of his liberty. Petitioner currently has exhausted all other avenues and is now forced to petition for his release under an Order of Supervision. In support of this petition, Petitioner presents the following

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 2241, 28 U.S.C. § 1331, 8 U.S.C. § 1651, and 5 U.S.C. § 701.
2. Jurisdiction is proper in this Court. Federal District Courts have jurisdiction under 28 U.S.C. § 2241 to hear petitions for writs of habeas corpus by non-citizens challenging the lawfulness of their detention. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).
3. Petitioner has exhausted all administrative remedies.
4. Venue is proper because Petitioner is detained at the Stewart Detention Center, in Lumpkin, Georgia, which is within the Middle District of Georgia. 28 U.S.C. § 2241(d); 28 U.S.C. § 1391.

PARTIES

5. Petitioner is a sixty-eight (68) year old male, native and citizen of Cuba, currently detained by ICE.

6. Respondent Kristi Noem is sued in her official capacity as Secretary of the Department of Homeland Security.

7. Respondent Todd Lyons is sued in his official capacity as Acting Director of United States Immigration and Customs Enforcement.

9. Respondent Jason Streeval of Stewart Detention Center is sued in his official capacity as Warden of the Stewart Detention Center and is Petitioner's immediate custodian.

10. Respondent George Sterling is sued in his official capacity as Acting Field Office Director of the Atlanta Field Office for ICE which has administrative control over the ICE officers at the Stewart Detention Center and were the arresting officers in this case.

FACTS

10. Petitioner is a Cuban national who came to the United States as a young boy and has lived and worked continuously in the United States since 1961.

11. Petitioner obtained his lawful permanent residency when he was about 15 years old.

12. Petitioner's lawful permanent residency was revoked on or about September 21, 1993, due to a conviction that disqualified him from maintaining his status.

13. Petitioner however was placed under an Order of Supervision by INS (now ICE) on or about 1993 due to their inability to remove him to Cuba.

14. Petitioner has diligently reported to his Order of Supervision appointments for about 33 years since ICE has been unable to remove him since 1993.

15. Petitioner's only times where he was unable to report with ICE is when he was in jail due to numerous convictions in between 1993 and 2020.

16. Nevertheless, since 1993, Respondents has been unable to remove Petitioner back to Cuban or to *any* other country.

17. On or about January 20, 2026, Petitioner was detained at a regular ICE check he presented himself to just like any other year he was required to present himself. At this time, he was informed that he would be removed "within days" to Cuba.

18. Petitioner suffers from high blood pressure, hernia, anxiety/depression, insomnia and has been working with a psychiatrist to deal with his mental health.

19. Petitioner's wife, United States citizen, also suffers from severe medical issues exacerbated by his detention.

20. Petitioner poses no flight risk and should not be considered a danger to the community as he has been rehabilitated since his last conviction and considering the fact that at no point since 1993 ICE considered him a danger or an individual likely to be removed any reasonable time soon as they maintained him out of custody.

MEMORANDUM OF LAW

21. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the United States Supreme Court addressed the indefinite detention of non-citizens awaiting removal from the United States. The Court held that indefinite detention of non-citizens awaiting removal violated core constitutional principles. Id. at 690. Specifically, the Court held that

detention of up to six months following the final removal order was presumptively reasonable, but that after six months, a detainee may petition for release with a showing that there is no significant likelihood of removal in the foreseeable future. Id. at 701. The Government must rebut that showing to continue detention. Id.

22. In the case at hand, Petitioner has been under an Order of Supervision for over 30 years and any detention to secure detention would be in violation of 8 U.S.C. § 1231.

23. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. Zadvydas, 533 U.S. at 690-691.

24. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention is unlawful. *See Matthews v. Eldridge*, 424 U.S. at 332; *see also Perry v. Sindermann*, 408 U.S. at 601-03 (1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

25. Respondents presumed basis for re-detaining Petitioner is 8 U.S.C. § 1231, the statute governing detention following a final order of removal ("post-order

detention"). Under the terms of this statute and the governing regulations, Petitioner-Plaintiff's detention is unlawful.

26. 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. The third subclause of 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory removal period "shall be subject to supervision" (emphasis added) under specific terms, including requirements that he or she appear periodically before an immigration officer and obey any written restrictions. *See also* 8 C.F.R. § 241.5 (specific conditions for release—involving but not limited to reporting requirements and travel document acquisition requirements—should an order of supervision be issued).

27. Furthermore, 8 U.S.C. § 1231(a)(7) provides that work authorization can be issued when the removal of an individual is impossible as a result of travel document related issues or "otherwise impracticable or contrary to the public interest." *See also* 8 C.F.R. §§ 241.5(c); 274a.12(c)(18).

28. To the extent that Respondents have revoked Petitioner's OSUP without notice or an opportunity to be heard, they violated the statute and the applicable regulations – 8 C.F.R. §§ 241.4(l) and 241.13(i) – by failing to provide Petitioner with a particularized notice of the reason(s) of the revocation of his release or an opportunity to respond to the allegations contained therein. When the Government fails to comply with its own federal regulations, as it did when it revoked Petitioner's release in violation of its own procedures, the action should be found invalid. *See* e.g., Ying Fong, 317 F. Supp. 2d at 403-04 (granting habeas petition

where Petitioner was deported fewer than seventy-two hours after her arrest and regulation mandated a seventy-two-hour rule); *see also Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017).

29. Moreover, under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing Court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

30. The decision to detain Petitioner, who had previously been released on an OSUP, and neither violated nor failed to comply with the OSUP, must be reviewed by this Court and found to be "arbitrary, capricious, an abuse of discretion and not in accordance with the law." 5 U.S.C. §§ 706(2)(A), (E). Absent this Court's intervention, Petitioner does not have any "remedy" to challenge the decision of Respondents.

31. The INA specifies circumstances upon which a person may be released from custody, and it does not provide for re-detention except impliedly for a violation of those terms. The relevant regulatory framework (8 C.F.R. §§ 241.4(l) and 241.13(i)) authorizes revocation of an individual's release on an OSUP only in certain contexts. Section 241.4(l) specifies revocation may occur upon violation of the conditions of release or when, in the district director's opinion, revocation is in the public interest because one of four conditions is met: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is

appropriate to enforce a removal order or to commence removal proceedings against an alien; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). Section 241.13(i) provides further conditions where release decisions may be revoked, only for the purpose of removal. Notably, several of these provisions are found only in the regulations and not the statute and are ultra-vires, but even to the extent they apply, Respondents have failed to comply with the process.

32. Under 8 C.F.R. § 241.13(i), Petitioner has, at minimum, a regulatory right to a detailed explanation for the reasons of revocation as well as an interview to contest the basis for the revocation. At a minimum, ICE "has the duty to follow its own federal regulations." Haoud v. Ashcroft, 350 F.3d 201, 205 (1st Cir. 2003) (quoting Nelson v. I.N.S., 232 F.3d 258, 262 (1st Cir. 2000)). It has failed to do so here.

33. In addition, Respondents' actions have also deprived Petitioner of due process of law. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. *See Mathews*, 424 U.S. at 332; *see also Perry*, 408 U.S. at 601-03 (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges*, 408 U.S. at 569-70.

34. The OSUP in this case has created a legitimate liberty and property interest for Petitioner which was created when the same OSUP was renewed for over 30 years to secure his freedom from physical confinement. *See Zadvydas*, 533 U.S. at 690.

35. Petitioner-Plaintiff also has a property interest in his OSUP. Property interests "are created and their dimensions are defined by existing rules or understandings that . . . secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents of State Colleges v. Roth*, 408 U.S. at 577.

36. To the extent that Respondents revoked Petitioner's OSUP without prior notice or opportunity to be heard, Respondents have acted in violation of statute, regulations, and the U.S. Constitution. *See Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) ("Defendants' cursory, abrupt, and predetermined notice that Plaintiff must self-deport within one month after permitting him to live in the United States pursuant to the ICE Stay for eighteen years fails to satisfy this fundamental constitutional right.")

37. If DHS designates a new country of removal after the completion of removal proceedings, the Immigration and Nationality Act (INA), the Due Process Clause, and binding international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim prior to carrying out the deportation. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country. *See Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) and *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).

38. In Petitioner's case, no proper notice has been given to him warranting detention nor has he suddenly become a danger to society as his last known criminal issue occurred over 20 years ago.

39. It would be patently contrary to the holding of *Zadvydas* to take a "wait and see" approach to current removal practices as it would be the very definition of indefinite detention absent foreseeable removal. "A theoretical possibility of eventually being removed does not satisfy the government's burden once the removal period has expired and the petitioner establishes good reason to believe [that] his removal is not significantly likely in the reasonably foreseeable future." Gonzalez-Rondon v. Gillis, No. 5:19-cv-109-DCB-MTP, 2020 U.S. Dist. LEXIS 110804, at *5 (S.D. Miss. June 23, 2020) (quoting Kane v. Mukasey, 2008 U.S. Dist. LEXIS 141911, 2008 WL 1139137 at *5 (S.D. Tex. 2008).

CLAIMS FOR RELIEF

40. Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

41. Petitioner's detention is not authorized by the Immigration and Nationality Act and is unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

42. Issue a Writ of Habeas Corpus directing Respondents to immediately release Petitioner from custody and placed back on an Order of Supervision;

43. Grant such other relief as this Court deems just and proper.

/s/Michael Urbina Dated: March 24, 2026
Michael Urbina, Esq.
Counsel for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Antonio Salguerio Gonzalez, 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.

/s/Michael Urbina Dated: March 24, 2026
Michael Urbina, Esq.
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