



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
Hector Hernandez-Viamontes  
Petitioner,

v.

Todd Blanche, U.S. Attorney General  
Markwayne Mullin, Secretary of DHS,  
Todd Lyons, Director of ICE  
Christopher LaRose, Warden of Otay Mesa Detention Center  
Respondent(s).

'26CV2549 JLS DEB

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO U.S.C. 2241 UNDER  
IMMIGRATION DETAINEE PROLONGED DETENTION AND TEMPORARY  
RESTRAINING ORDER, INJUNCTIVE RELIEF**

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**I. INTRODUCTION**

1. Petitioner Hector Hernandez-Viamontes native and citizen of Cuba, currently detained by U.S. Immigration and Customs Enforcement ICE at Otay Mesa Detention Center San Diego, CA 92143, respectfully petitions this Court for a writ of Habeas Corpus under U.S.C. 2241 and request for a Temporary Restraining Order, Injunctive Relief.
2. Petitioner has been in immigration proceedings since 9-14-2024 approximately six months pursuant to 8 U.S.C. 1231 (a), despite ICE inability to execute the removal order due to the lack of diplomatic cooperation or practical ability to carry out removals to Cuba for Petitioner.
3. Petitioner seeks immediate release from detention on the grounds that continued detention violates the Due Process Clause of the Fifth Amendment and the Supreme Court ruling in *Zadvydas v. Davis* 533 U.S. 678 (2001).

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**II. JURISDICTION AND VENUE**

4. This court has Jurisdiction under 28 U.S.C. 2241 and Article I, Section 9, Clause 2 of the U.S. Constitution.
5. Venue is proper in this District under 28 U.S.C. 1391 (e) because Petitioner is detained within the Jurisdiction of this court at Otay Mesa Detention Center.

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**III. PARTIES**

6. Petitioner is a native and citizen of Cuba who is currently detained by ICE.
7. Respondent's are U.S. Government officials with custody over Petitioner or authority over Immigration detention and removal.

## VI. FACTUAL BACKGROUND

8. Petitioner has been granted
9. Petitioner has remained in ICE custody continuously since 9-14-2024.
10. ICE has not been able to secure travel documents or deport Petitioner to Cuba due to the lack of diplomatic cooperation or practical ability to carry out removals to Cuba.
11. Petitioner has fully cooperated with ICE efforts to secure travel documents.
12. More than six months have passed since the apprehension of Petitioner by ICE.
13. There is no significant likelihood of removal in the foreseeable future.

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## V. LEGAL FRAMEWORK

### **Prolonged Immigration Detention Violates Due Process (Fifth Amendment)**

14. My detention for the past 19 Months without release violates the Due Process Clause of the Fifth Amendment. Immigration detention is civil, not punitive.
15. Habeas Corpus relief extends to a person “in custody under or by color of the authority of the United States” if the person can show he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C 2241 (c)(1), (c) (3); see also *Antonelli v. Warden*, U.S.P Atlanta, 542 F.3d 1348, 1352 (11<sup>th</sup> Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C section 2241 if they concern the continuation of confinement).
16. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), post-final order detention beyond six months is presumptively unreasonable if there is no significant likelihood of removal in the foreseeable future.
17. Continued detention Violates the Due Process Clause of the Fifth Amendment.
18. ICE bears the burden to show a significant likelihood of removal; it has not met that burden.

### **Conditions and Length of Detention Render Custody Excessive Relative to Its Purpose.**

19. Immigration detention is meant to ensure appearance at proceedings and protect the community. Detention lasting more than 19 Months is not reasonable related to those purposes and has become punitive. Lesser restrictions can achieve those goals.

### **Existence of Pending Proceedings Before Immigration Court Does Not Divest District Court of Habeas Corpus Jurisdiction.**

20. In *Fofana v. Albence*, Petitioner filed a Habeas Corpus petition requesting their immediate release from detention lasting while they await decisions in pending removal or Asylum proceedings before the immigration courts (*Fofana v. Albence*, 454 F.Supp.3d 651 (2020)). The court exercised jurisdiction over the detention challenge despite the ongoing immigration proceedings.
21. Similarly, in *Valdez v. Joyce*, ---F.Supp.3d... (2025), a petitioner with removal proceedings and an asylum application pending before immigration court successfully petitioned for a writ of habeas corpus challenging his detention, and court granted immediate release from custody (*Valdez v. Joyce*, ---F.Supp.3d--- (2025))

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**VI. CLAIM FOR RELIEF**

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

22. Petitioner's continued detention violates the Constitution and *Zadydas* because:

- \* There is no significant likelihood of removal in the foreseeable future.
- \* Petitioner has fully cooperated with removal efforts.
- \* Ice's prolonged detention is punitive and lacks jurisdiction.

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**VII. PRAYER FOR RELIEF**

A. Issues a writ of Habeas Corpus directing Respondent's to immediately release Petitioner from custody and request for Injunctive Relief. Temporary Restraining Order.

B. Grant such further relief as the Court deems just and proper.



Respectfully Submitted,

Date: 4-16-2026  
Hector Hernandez-Viamontes



Otay Mesa Detention Center  
P.O. Box 439049  
San Diego, CA 92143