UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Jose Alberto Ayala Zaldivar,

Petitioner,

v.

Markwayne Mullin, Secretary, U.S. Department of Homeland Security
Garrett J. Ripa, Miami Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement; U.S. Department of Homeland Security; Todd Blanche, U.S. Attorney General; Executive Office for Immigration Review; Warden of Florida Soft Side South Detention Facility

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Alberto Ayala Zaldivar, A# [redacted], respectfully submits this Petition for Writ of Habeas Corpus challenging his continued detention by the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE").

2. Petitioner was admitted through Queens, New York into the United States on July 24, 1973, as an indefinite refugee from Cuba and has resided continuously in the United States since that time.

3. On or about 2002, Following completion of his criminal sentence, Petitioner was released from state custody directly into the custody of ICE.

4. After ICE was unable to effectuate removal, Petitioner was released from custody under an Order of Supervision pursuant to INA § 241(a)(3), 8 U.S.C. § 1231(a)(3), which he has faithfully complied with for nearly thirteen years. He was then put on OSUP since 2002 which was recently revoked.

5. On December 3, 2025, over two decades after his release on supervision, ICE re-detained Petitioner.

6. Removal is not reasonably foreseeable because removal to Mexico as in January and March 2026, removal was attempted and were unsuccessful.

7. Petitioner's continued detention is therefore unauthorized under INA § 241(a)(6), exceeds statutory authority, and violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

8. Petitioner seeks immediate relief from this unlawful detention, including release under the existing Order of Supervision or under reasonable conditions of supervision.

9. There have been no changed circumstances to justify Petitioner's re-detention and no evidence that removal to Cuba is likely to occur in the reasonably foreseeable future.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at Florida Soft Side South Detention Facility in Ochopee, Florida.

11. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause) and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701, *et seq*.

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. 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.

14. 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

15. This Petition for Writ of Habeas Corpus is brought pursuant to 28 U.S.C. § 2243 to challenge the Respondent's unlawful detention of Petitioner, who has been subject to an Order of Supervision for nearly twenty three years, has complied with all its terms, and whose detention bears no reasonable relation to a likelihood of removal.

16. 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

17. Petitioner Jose Alberto Ayala Zaldivar is a citizen of Cuba who has been in immigration detention since December 3, 2025. After Petitioner was detained while attending his ICE check in appointment.

18. Respondent Garrett J. Ripa is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division. As such, Garrett J. Ripa is

Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in her official capacity.

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

21. Respondent Todd Blanche, Attorney General of the United States. Is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency.

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

23. Respondent Warden of Florida Soft Side South Detention Facility is employed by a private corporation as Warden of Florida Soft Side South Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIM FOR RELIEF

Count I
Unlawful Post-Order Detention in Violation of the Fifth Amendment and 28 U.S.C. § 2241 Because There Is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

24. Petitioner's continued detention is unlawful because there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner has already been subjected to repeated but unsuccessful removal efforts, on or about January and March 2026 attempted removals to Mexico that did not result in repatriation. Despite those attempts, Respondents have not produced evidence that Mexico has formally accepted Petitioner for repatriation, and have not produced valid travel documents authorizing removal. These circumstances demonstrate more than a temporary delay; they establish a present inability to execute removal.

25. Under *Zadvydas v. Davis*, once detention has extended beyond the presumptively reasonable period and the noncitizen provides good reason to believe removal is not significantly likely in the reasonably foreseeable future, the burden shifts to the Government to rebut that showing. Here, repeated failed removal attempts, the absence of travel documents, and the lack of evidence of receiving-country acceptance establish precisely the type of indefinite detention prohibited by due process. Continued detention therefore violates the Fifth Amendment and habeas relief is warranted.

Count II
Continued Detention Is Arbitrary and Violates Substantive and Procedural Due Process

26. Petitioner's continued detention is arbitrary and violates the Due Process Clause because detention no longer bears a reasonable relationship to its purported purpose of effectuating removal. Civil immigration detention may not become punitive or indefinite where removal is not realistically foreseeable. Where the Government has twice failed to remove Petitioner and cannot show a meaningful prospect of removal in the reasonably foreseeable future, continued confinement ceases to serve a legitimate regulatory purpose.

27. Further, revocation of Petitioner's prior Order of Supervision, followed by prolonged detention without a realistic removal prospect, underscores the arbitrary nature of custody. Petitioner was previously managed through supervision in the community, demonstrating the existence of less restrictive alternatives to detention. Respondents' continued confinement despite those alternatives violates due process.

Count III
Detention Is Unlawful Because Respondents Have Failed to Demonstrate a Significant Likelihood of Effectuating Removal to Mexico

28. Respondents cannot justify continued detention based on speculative removal possibilities. The Government may not rely on abstract assertions that removal might occur someday; it must show a realistic and significant likelihood of removal in the reasonably foreseeable future. Here, there is no evidence Mexico has

agreed to accept Petitioner, no evidence travel documents have been issued, and two prior attempted removals failed. Mere hope of future repatriation cannot support continued detention.

29. Because removal remains speculative and unsupported by concrete evidence, detention exceeds statutory and constitutional limits and Petitioner is entitled to release under reasonable conditions of supervision.

Count IV
In the Alternative, Petitioner Is Entitled to Release Under Reinstatement of an Order of Supervision Pursuant to 8 C.F.R. § 241.13

30. Even assuming arguendo Respondents contend removal remains possible, Petitioner is at minimum entitled to release under supervision. Petitioner was previously released pursuant to an Order of Supervision, demonstrating that community supervision is a viable and previously utilized means of managing custody. Given the absence of a realistic removal prospect, reinstatement of supervision is the appropriate remedy consistent with 8 C.F.R. § 241.13 and constitutional limitations on prolonged detention.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

d. Grant any other and further relief that this Court deems just and proper.

DATED this 9th of May, 2026.

/s/ Yaritssa Plasencia
Yaritssa Plasencia, Esq.
Florida Bar No.: 1021659
Great American Law Firm PLLC
100 Frandorson Cir., Ste. 202C
Apollo Beach, FL 33572
Phone: (407) 929-9292
Email: greatamericanlaw@gmail.com
Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Yaritssa Plasencia, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Jose Alberto Ayala Zaldivar, based on discussions with his attorney. On the basis of these discussions and reviewing the record, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 9th of May, 2026.

/s/ Yaritssa Plasencia
Yaritssa Plasencia, Esq.
Florida Bar No.: 1021659
Great American Law Firm PLLC
100 Frandorson Cir., Ste. 202C

Apollo Beach, FL 33572
Phone: (407) 929-9292
greatamericanlaw@gmail.com
Attorney for Petitioner