

FILED

UNITED STATES DISTRICT COURT

for the
Eastern District of California

JUL 10 2026

Javier de la Torre Herrera

Petitioner

v.

Warden, California City Immigration Processing Center
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Respondent

(name of warden or authorized person having custody of petitioner)

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

1:26cv5307 DAD SCR (HK)

Case No.

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Javier de la Torre Herrera
(b) Other names you have used: _____
2. Place of confinement:
(a) Name of institution: California City Immigration Processing Center
(b) Address: 22844 Virginia Boulevard
California City, CA 93505
(c) Your identification number: [REDACTED]
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
☒ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

- ☐ Pretrial detention
☒ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other (*explain*): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: _____

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):

Petitioner has been detained for over 180 days after a final order of removal. Removal is not reasonably foreseeable. Petitioner previously complied with an Order of Supervision for years before ICE revoked supervision and re detained Petitioner without adequate due process. Continued detention is unlawful.

(d) Date of the decision or action: 12/29/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☒ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☒ Yes

☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 12/29/2025

(b) Date of the removal or reinstatement order: 03/27/2013

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Violation of 8 U.S.C. § 1231(a)(6): Continued detention beyond six months where removal is not reasonably foreseeable.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner has remained in ICE custody since December 29, 2025, under a final order of removal. More than six months have elapsed, and removal is not significantly likely in the reasonably foreseeable future. Continued detention has become indefinite and exceeds the limits authorized by federal law and the Constitution

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO:

Violation of the Fifth Amendment Due Process Clause: Arbitrary re detention after years of successful compliance with an Order of Supervision.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner was released under an Order of Supervision and successfully complied with all reporting and supervision requirements for years. Petitioner never absconded, never failed to report, and committed no conduct demonstrating a present danger to the community. ICE nevertheless re detained Petitioner without any material change in circumstances sufficient to justify the loss of liberty.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE: Violation of the Fifth Amendment Due Process Clause: Continued detention despite the absence of a realistic prospect of removal.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner has not been issued valid travel documents and Mexico has not accepted Petitioner for removal. Despite prolonged detention, ICE has been unable to effectuate Petitioner's removal and has provided no definite removal date. The lack of a realistic removal pathway demonstrates that removal is not significantly likely in the reasonably foreseeable future.

Continued detention under these circumstances violates due process.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☒ No

GROUND FOUR: Continued detention is excessive, punitive in effect, and no longer reasonably related to any legitimate immigration purpose.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner poses no flight risk and no danger to the community. Less restrictive alternatives to detention were successfully utilized for years. Petitioner suffers from serious medical conditions requiring ongoing treatment. Under these circumstances, continued detention serves no legitimate civil purpose and imposes severe and unnecessary hardship.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

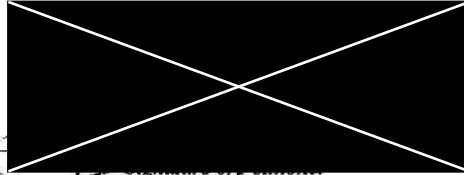
15. State exactly what you want the court to do: Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus, declare Petitioner's continued detention unlawful, order Petitioner's immediate release under appropriate conditions of supervision, and grant such other relief as the Court deems just and proper.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 06/29/2024

A black rectangular box with a white 'X' drawn across it, used to redact a signature.

Signature of Attorney or other authorized person, if any

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JAVIER DE LA TORRE HERRERA,

Petitioner,

v.

WARDEN, CALIFORNIA CITY IMMIGRATION

PROCESSING CENTER, et al.,

Respondents.

Case No. _____

(Companion to M.D. Fla. Case No. 3:26-cv-292-WWB-PDB)

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241

I. INTRODUCTION

Petitioner Javier De La Torre Herrera, a Cuban national, respectfully submits this Memorandum of Law in support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. This petition is filed as a protective companion to a habeas petition pending before the United States District Court for the Middle District of Florida, Jacksonville Division, Case No. 3:26-cv-292-WWB-PDB (“the Florida Petition”). Petitioner filed the Florida Petition on February 11, 2026, while confined at Baker County Detention Center in Sanderson, Florida. He has since been transferred by ICE to California City Immigration Processing Center (“CCIPC”) in California City, California, within this District. This protective filing preserves Petitioner’s habeas rights in the district of his current physical confinement and requests that this Court transfer this matter to the Middle District of Florida for consolidation with the Florida Petition, or in the alternative, exercise jurisdiction and grant relief on the merits.

Petitioner has been in continuous immigration detention since December 29, 2025—now nearly six months. The six-month Zadvydas threshold falls on June 27, 2026, and is imminent. ICE’s own 90-day administrative custody review period elapsed on or about March 25, 2026, without any decision to release Petitioner, making this petition administratively ripe. Petitioner is subject to a final order of removal that has been outstanding since 2013. For over a decade following that order, the government could not remove him to Cuba and instead released him under an Order of Supervision (“OSUP”) that he complied with fully and without a single violation. ICE then re-detained him on December 29, 2025, without any finding of changed circumstances, without meaningful procedural process, and without any documented violation of his supervision conditions. Cuba’s historically documented non-cooperation with the United States on repatriations makes removal no more foreseeable today than it was in 2013.

Two independent constitutional violations compel immediate release: prolonged detention in violation of *Zadvydas v. Davis*, 533 U.S. 678 (2001), and a procedurally void OSUP revocation in violation of 8 C.F.R. § 241.13(i)(3) and the Due Process Clause of the Fifth Amendment.

II. JURISDICTION, VENUE, AND THE COMPANION FLORIDA PETITION

A. This Court Has Jurisdiction Over Petitioner's Current Custodian.

Federal courts have subject-matter jurisdiction over habeas petitions filed by persons “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Jurisdiction under § 2241 lies in the district of confinement, and the proper respondent is the immediate custodian—the warden or officer in charge of the facility where the petitioner is physically held. *Rumsfeld v. Padilla*, 542 U.S. 426, 443–47 (2004). Because Petitioner is now confined at California City Immigration Processing Center in California City, California, within this District, this Court has jurisdiction over the Warden of that facility.

B. The Florida Court Retains Jurisdiction Over the Original Petition.

The Middle District of Florida acquired jurisdiction over the Florida Petition when Petitioner filed it on February 11, 2026, while confined at Baker County Detention Center. That jurisdiction was not divested by Petitioner's subsequent transfer to California. It is well established that habeas jurisdiction attaches at the time of filing and is not defeated by a later change in the place of confinement. See *Padilla*, 542 U.S. at 441; 28 U.S.C. § 2241(d). The Florida court issued its show-cause order on February 13, 2026, directing Respondents to respond within thirty days and affording Petitioner thirty days to reply. See *De La Torre Herrera v. Warden*, No. 3:26-cv-292-WWB-PDB, Doc. 3 (M.D. Fla. Feb. 13, 2026). Petitioner has filed or will file a notice of transfer with the Florida Court to preserve that court's jurisdiction over the original petition.

Accordingly, two courts have a basis for jurisdiction: the Middle District of Florida over the Florida Petition, and this Court over Petitioner's current physical confinement. This protective petition is filed solely to ensure that no gap in habeas coverage results from the transfer, and not to obtain duplicative relief.

C. Petitioner Requests Transfer to the Middle District of Florida.

In the interest of judicial economy and to avoid inconsistent rulings, Petitioner respectfully requests that this Court transfer this petition to the Middle District of Florida for consolidation with Case No. 3:26-cv-292-WWB-PDB. Transfer is appropriate under 28 U.S.C. § 1404(a) and the interest-of-justice standard. The Florida court is already familiar with the case, has issued a show-cause order to which Respondents have responded or are required to respond, and is the more convenient forum for the government's counsel already appearing in that matter. The full factual and procedural record has been developed in Florida, and Petitioner's transfer to California was a unilateral act by ICE that should not be permitted to defeat the jurisdiction Petitioner invoked when he originally filed.

In the alternative, if this Court declines to transfer, Petitioner requests that it hold this petition in abeyance pending resolution of the Florida Petition, and dismiss it without prejudice upon entry of a final, enforceable order in that case. If neither transfer nor abeyance is granted, Petitioner requests that this Court adjudicate the petition on the merits as set forth below.

III. FACTUAL BACKGROUND

Petitioner Javier De La Torre Herrera is a Cuban national. A final order of removal was entered against him in 2013. Rather than effectuate removal—which Cuba's government declined to facilitate—ICE placed Petitioner under an Order of Supervision pursuant to 8 U.S.C. §

1231(a)(6) and 8 C.F.R. § 241.5. For years thereafter, Petitioner complied fully with every condition of supervision—reporting as required, maintaining his residence, and committing no violations of any kind.

On December 29, 2025, ICE re-detained Petitioner, purportedly revoking his OSUP. ICE did not provide advance written notice identifying any changed circumstance justifying revocation. ICE did not conduct a meaningful informal interview affording Petitioner an opportunity to respond before re-detention. ICE did not issue individualized written findings identifying any specific basis—such as a new criminal conviction, an absconder determination, or a flight risk finding—sufficient to justify re-detention. To Petitioner’s knowledge, the administrative record contains no documentation of any violation of his supervision conditions.

Petitioner filed his habeas petition in the Middle District of Florida on February 11, 2026, while confined at Baker County Detention Center. The Florida court issued its show-cause order on February 13, 2026. ICE’s 90-day administrative custody review period elapsed on or about March 25, 2026, without any decision to release Petitioner, confirming that administrative remedies have been exhausted and this petition is ripe for adjudication. Petitioner was thereafter transferred to California City Immigration Processing Center.

As of the date of this filing, Petitioner has been in continuous immigration detention for nearly six months. The Zadvydas six-month threshold falls on June 27, 2026. The government has not obtained travel documents permitting removal to Cuba, has not scheduled a removal flight, and has not presented Petitioner with a definite removal date. Cuba has a well-documented history of non-cooperation with United States removal efforts. Notably, the government has proposed removing Petitioner to Mexico as a third-country alternative—a proposal that itself concedes the absence of any realistic prospect of removal to Cuba. Petitioner has no legal nexus to Mexico,

Mexico has not agreed to accept him, and no travel documents authorizing his entry into Mexico have been obtained. The government thus has no viable removal destination, to Cuba or elsewhere. The same structural barriers that prevented removal for over a decade following the 2013 order remain fully in place today.

IV. ARGUMENT

A. Petitioner's Detention Is at the Zadvydas Threshold and Removal to Cuba Is Not Reasonably Foreseeable.

The Due Process Clause does not permit indefinite post-removal-order detention. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court construed 8 U.S.C. § 1231(a)(6) to contain an implicit reasonableness limitation, fixing six months as the presumptively reasonable period. *Id.* at 699–701. Once that period has run, the detainee need only demonstrate “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future” to shift the burden to the government. *Id.* at 701. The Ninth Circuit has confirmed that this framework applies in this Circuit. *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011).

Petitioner was re-detained on December 29, 2025. The six-month *Zadvydas* threshold falls on June 27, 2026—imminent as of the date of this filing. The burden has therefore shifted, or is about to shift, to the government to come forward with concrete evidence that removal to Cuba is significantly likely in the reasonably foreseeable future. It cannot do so.

Cuba presents one of the most historically documented examples of a non-cooperating country. The Cuban government has long refused or severely limited repatriation of its nationals from the United States, and there is no basis to conclude that this structural barrier has been removed. The government held a final order of removal against Petitioner since 2013—over twelve

years—and never effectuated removal, ultimately releasing him under supervision. That twelve-year record of failed removal efforts is itself compelling evidence that no significant likelihood of removal exists in the reasonably foreseeable future. No travel documents have been secured. No removal flight has been scheduled. No definite removal date has been provided to Petitioner.

The government's proposal to remove Petitioner to Mexico as a third-country alternative only deepens the constitutional problem. That proposal is an implicit admission that removal to Cuba is not feasible. It is also independently unlawful: 8 U.S.C. § 1231(b)(2) establishes a strict sequential framework for third-country removal that requires, among other things, that the receiving country consent to accept the alien. Mexico has not consented. No travel documents authorizing Petitioner's entry into Mexico have been issued. Petitioner has no legal nexus to Mexico. A proposed removal that lacks the receiving country's acceptance and the required travel documents is not "removal in the reasonably foreseeable future" within the meaning of *Zadvydas*—it is speculation. The government cannot satisfy its burden under *Zadvydas* by pointing to an unauthorized, unconsented, undocumented third-country proposal. Under these circumstances, continued detention past the six-month mark serves no permissible statutory purpose. *Zadvydas*, 533 U.S. at 699.

B. The OSUP Revocation Was Procedurally Void Under 8 C.F.R. § 241.13(i)(3) and the Fifth Amendment.

Independent of *Zadvydas*, re-detention was unlawful from its inception because the OSUP revocation failed to satisfy the procedural requirements ICE's own regulations impose. Under 8 C.F.R. § 241.13(i)(3), before revoking an order of supervision and re-detaining an individual under § 1231(a)(6), ICE must provide a "prompt informal interview" at which the alien may appear and

speak on his or her own behalf, and must issue written notification identifying the specific factors supporting revocation. ICE satisfied none of these requirements.

Petitioner received no advance notice identifying changed circumstances. He was afforded no meaningful opportunity to respond before re-detention. The administrative record contains no individualized written findings identifying any violation of supervision conditions, any new criminal conviction, any absconder designation, or any other changed circumstance capable of supporting revocation. Petitioner complied with his OSUP for years without a single documented violation. The absence of any changed circumstance makes the re-detention not only procedurally void but substantively arbitrary—precisely what the Due Process Clause prohibits. See *Diouf*, 634 F.3d at 1086–87 (recognizing that prolonged detention of post-order aliens implicates core due process protections).

C. The Appropriate Remedy Is Immediate Release With or Without Conditions of Supervision.

Where the government cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future and the OSUP revocation was procedurally void, the proper remedy is release. *Zadvydas*, 533 U.S. at 699–700. Conditional release under a reinstated Order of Supervision is the well-established and routinely ordered remedy. Petitioner does not pose a flight risk: his years of unbroken compliance with supervision conditions—across more than a decade—demonstrates that he will abide by any conditions this Court imposes. The government has not identified, and the record does not support, any finding of danger to the community or likelihood of absconding.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Transfer this petition to the United States District Court for the Middle District of Florida, Jacksonville Division, for consolidation with Case No. 3:26-cv-292-WWB-PDB; or, in the alternative,
2. Hold this petition in abeyance pending resolution of the Florida Petition and dismiss it without prejudice upon entry of a final enforceable order in that case; or, in the alternative,
3. Exercise jurisdiction and order Petitioner's immediate release from immigration detention, with or without conditions of supervision; and
4. Grant such other and further relief as the Court deems just and proper.

Petitioner respectfully requests expedited consideration. The six-month Zadvydas threshold falls on June 27, 2026. ICE's 90-day administrative review elapsed on March 25, 2026, without action. There is no foreseeable removal date and no concrete prospect of removal to Cuba.

Respectfully submitted,



Javier De La Torre Herrera

Petitioner, Pro Se

California City Immigration Processing Center

22020 S. Hazel Street

California City, California 93505



Date: 06/29/2026