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UNITED STATES DISTRICT COURT
WESTERN DISTRICT COURT OF TEXAS
EL PASO DIVISION

Sergio Robles-Noa,

Petitioner,

v.

Markwayne Mullin, Secretary, U.S.
Department of Homeland Security **Mary De
Anda-Ybarra**, El Paso Field Office Director
of Enforcement and Removal Operations, El
Paso Field Office, Immigration and Customs
Enforcement; **Todd Blanche**, U.S. Attorney
General; **Warden** of ERO El Paso Camp
East Montana

Respondents.

Case No. **3:26-cv-1956**

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Sergio Robles-Noa, A#  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. On or about October 8, 1971, Petitioner was paroled into the United States as from Cuba from Freedom Flights and has resided continuously in the United States since that time.
3. In 1994, Petitioner was convicted of a drug-related offense and served a term of imprisonment in the United States. Following the completion of his criminal sentence, Petitioner was placed in immigration proceedings.
4. On May 25, 2004, an Immigration Judge entered a final order of removal against Petitioner.
5. On or about September 2, 2004, after ICE was unable to effectuate removal, Petitioner was released from custody under an Order of Supervision (“OSUP”) pursuant to INA § 241(a)(3), 8 U.S.C. § 1231(a)(3).
6. On or about January 13, 2026, Petitioner’s OSUP was recently revoked by ICE alleging removal to Mexico was possible.
7. Since revoking Petitioner’s Order of Supervision, DHS has not identified a new travel document, a new bilateral repatriation agreement, or any individualized evidence that Mexico or Cuba is now willing to accept Petitioner’s return.
8. Petitioner previously sought habeas relief challenging this same detention in the United States District Court for the Middle District of Florida, *Robles-Noa v. Mullin*,

Case No. 2:26-cv-707-KCD-DNF. On April 27, 2026, that court denied the petition without prejudice as premature, holding that Petitioner had not yet been detained for the six-month presumptively reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001). The court expressly invited Petitioner to refile his petition once his detention exceeded the six-month mark and he could demonstrate no significant likelihood of removal in the reasonably foreseeable future. Petitioner's detention has now exceeded six months, and this Petition follows that court's instruction. Petitioner was thereafter transferred from ICE custody in Florida to ERO El Paso, Texas, where he is presently detained; his detention under the same January 13, 2026 custody determination has been continuous throughout the transfer.

9. Petitioner's wife has recently been diagnosed with a rare and aggressive form of breast cancer. Due to the severity of her diagnosis, she has begun chemotherapy and radiation treatment, and the family is facing an extraordinary medical crisis. Her prognosis and ability to endure the physical and emotional burdens of treatment without her husband's support remain deeply concerning. Petitioner's continued detention prevents him from providing essential emotional, practical, and familial assistance during this critical period, placing an exceptional hardship on both his wife and their family. This humanitarian circumstance further weighs in favor of the Court granting the requested relief and ordering Petitioner's release while these proceedings remain pending.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at ERO El Paso East Montana in El Paso, Texas.

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).
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 Western District of Texas, the judicial district in which Petitioner currently is detained. *See also Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)
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 Western District of Texas.

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 more than twenty-one 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).

EXHAUSTION IS NOT REQUIRED, AND FURTHER ADMINISTRATIVE REVIEW WOULD IN ANY EVENT BE FUTILE

17. Exhaustion of administrative remedies is not a statutory prerequisite to relief under 28 U.S.C. § 2241. Any exhaustion requirement in this context is judicial and prudential only, and may be excused where administrative remedies would be inadequate, pursuit of them would be futile, or irreparable injury would result from further delay. *See Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1034 (5th Cir. 1982).
18. Exhaustion likewise does not bar review. Section 2241 contains no statutory exhaustion requirement for challenges to immigration detention, and any exhaustion requirement is therefore prudential rather than jurisdictional. Congress imposed a statutory exhaustion requirement only for judicial review of final orders of removal. See 8 U.S.C. § 1252(d)(1). Because Petitioner does not challenge a final order of removal, § 1252(d)(1) does not apply. Moreover, prudential exhaustion is excused where pursuit of administrative remedies would be futile or inadequate. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994).
19. Here, neither the Immigration Judge nor the Board of Immigration Appeals can grant the constitutional habeas relief sought, and requiring Petitioner to pursue administrative remedies would therefore serve no purpose. Numerous district courts within the Fifth Circuit have likewise declined to require exhaustion under these circumstances. See *Lainez Lainez v. Bondi*, No. 5:26-cv-64, 2026 WL 1726276, slip op. at 3 (S.D. Tex. June 2026) (holding there is no statutory exhaustion requirement

for detention challenges under § 2241 and waiving prudential exhaustion because requiring resort to the immigration courts would be patently futile where the agency lacked authority to provide the requested relief).

20. Further administrative review would in any event be futile here: DHS itself concluded for more than twenty-one years, through Petitioner's maintenance on an Order of Supervision, that his removal could not be accomplished, and Respondents have identified no changed circumstance since the January 2026 revocation that additional agency review would meaningfully test.

PARTIES

21. Petitioner **Sergio Robles-Noa** is a citizen of Cuba who has been in immigration detention since January 13, 2026.
22. Respondent **Mary De Anda-Ybarra** is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mary De Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.
23. 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 his official capacity.
24. Respondent **Todd Blanche**, Acting 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.

25. Respondent **Warden** of ERO El Paso Camp East Montana is employed by a private corporation as Warden of ERO El Paso Camp East Montana Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

I. *Zadvydas* governs this case.

26. The Supreme Court has made clear that the Government's authority to detain a noncitizen after entry of a final order of removal is not indefinite. Although Congress authorized post-removal-order detention to facilitate the execution of removal orders, that authority is constitutionally limited to the period reasonably necessary to accomplish removal.

27. Where removal is no longer reasonably foreseeable, continued detention ceases to bear a reasonable relation to its statutory purpose and violates the Due Process Clause of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 689–90, 699–701 (2001).

28. The Supreme Court's prior holding in *Zadvydas v. Davis*, that the Immigration and Nationality Act (INA) limits time that government may detain aliens who have been found removable to that reasonably necessary to effect removal...also applies to aliens deemed inadmissible to the United States. *Clark v. Martinez*, 543 U.S. 371 (2005).

29. This case presents precisely that circumstance. Petitioner has now remained in immigration detention for more than six months following the revocation of an Order of Supervision under which he successfully lived in the community for more than twenty-one years, yet Respondents have identified no evidence demonstrating that his removal is significantly more likely today than when they themselves concluded in 2004 that removal could not be accomplished. Under *Zadvydas*, continued detention on these facts is unlawful.

II. Petitioner's twenty-one years on supervision is compelling evidence that removal is not reasonably foreseeable.

30. Unlike the typical *Zadvydas* petitioner, Petitioner does not rely solely upon the passage of six months of post-removal-order detention to demonstrate that removal is not reasonably foreseeable.

31. Rather, the Government's own actions over the course of more than two decades establish that conclusion.

32. After detaining Petitioner following the entry of his final order of removal, DHS determined in September 2004 that it could not effectuate his removal and exercised its statutory authority to release him under an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3).

33. Petitioner then remained lawfully at liberty under that supervision for approximately twenty-one years. During that entire period, he complied with every reporting requirement, remained continuously available for removal, committed no act designed to frustrate or impede his removal, and demonstrated that supervision adequately served the Government's legitimate interests.

34. The significance of this history cannot be overstated. An Order of Supervision is not a temporary act of administrative grace; it is the mechanism Congress and DHS have prescribed when detention can no longer be justified despite the existence of a final order of removal. See 8 U.S.C. § 1231(a)(3); 8 C.F.R. §§ 241.4, 241.5.
35. By maintaining Petitioner on supervised release for more than twenty-one years, DHS repeatedly reaffirmed through its own conduct that removal could not then be accomplished and that continued detention was unnecessary. That prolonged course of agency action is itself compelling evidence that there has long been no significant likelihood of effectuating Petitioner's removal in the reasonably foreseeable future.
36. Nothing in the present record demonstrates that the circumstances preventing Petitioner's removal materially changed before DHS abruptly revoked his Order of Supervision in January 2026.
37. Respondents have identified no newly issued travel document, no diplomatic agreement, no change in Cuba's repatriation practices, no evidence that Mexico has agreed to accept Petitioner, and no other development explaining why removal suddenly became realistically attainable after more than two decades during which DHS itself concluded otherwise. Absent such evidence, the Government cannot transform a detention that was unconstitutional twenty-one years ago into a constitutional one simply by revoking supervision and reincarcerating Petitioner.
38. Indeed, Petitioner's lengthy history on supervised release makes this case considerably stronger than the ordinary *Zadvydas* case. Most petitioners rely upon evidence developed only after six months of detention to establish that removal is

not reasonably foreseeable. Here, the Government's own twenty-one-year course of conduct independently establishes that conclusion.

39. The Court therefore need not speculate whether removal is likely in the reasonably foreseeable future; DHS's decades-long inability to execute the removal order, coupled with the absence of any material change in circumstances, demonstrates that continued detention no longer bears a reasonable relation to the statutory purpose identified in *Zadvydas* and therefore violates the Fifth Amendment.

III. Respondents Cannot Rebut Petitioner's Showing That Removal Is Not Reasonably Foreseeable.

40. Once a petitioner provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the Government to produce evidence sufficient to rebut that showing. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Mere speculation that removal may someday become possible is insufficient. Rather, Respondents must present concrete, individualized evidence demonstrating that Petitioner's removal is significantly likely to occur within the reasonably foreseeable future.

41. Respondents cannot satisfy that burden here. Despite detaining Petitioner for more than six months following the revocation of his Order of Supervision, they have identified no evidence that Cuba has agreed to accept him, no travel document authorizing his repatriation, no scheduled removal flight, no diplomatic communication indicating that removal is imminent, and no other individualized evidence demonstrating that execution of the removal order is reasonably foreseeable. To the contrary, the only objective evidence before the Court

demonstrates that DHS itself was unable to remove Petitioner for more than twenty-one years despite possessing the same final order of removal.

42. Nor can Respondents rely upon generalized assertions that diplomatic relations or repatriation practices may improve in the future. *Zadvydas* expressly rejected indefinite detention based upon the mere possibility that removal might eventually become feasible. The relevant inquiry is not whether removal is theoretically possible at some undefined point in the future, but whether there exists a significant likelihood that removal will occur within the reasonably foreseeable future. 533 U.S. at 699-701. That standard requires evidence, not conjecture.
43. The Government's own conduct further undermines any assertion that removal is presently foreseeable. After maintaining Petitioner on an Order of Supervision for more than two decades because removal could not be accomplished, DHS abruptly revoked that supervision without identifying any material change in circumstances.
44. Respondents have not explained what changed between January 12, 2026, when supervised release supposedly remained adequate, and January 13, 2026, when detention allegedly became necessary. The absence of any documented change in Petitioner's circumstances or in the practical ability to execute the removal order strongly confirms that the present detention rests upon administrative discretion rather than any realistic prospect of removal.
45. Accordingly, because Petitioner has established good reason to believe that his removal is not significantly likely in the reasonably foreseeable future, and because Respondents cannot rebut that showing with competent evidence, continued

detention violates the constitutional limitations recognized in *Zadvydas* and *Clark v. Martinez*, 543 U.S. 371 (2005), and the writ should issue.

IV. DHS's Unexplained Revocation of Petitioner's Twenty-One-Year Order of Supervision Was Arbitrary, Capricious, and Contrary to Law

46. The Administrative Procedure Act requires federal agencies to engage in reasoned decision-making. An agency acts arbitrarily and capriciously when it departs from its own prior course of conduct without acknowledging the change, considering the reliance interests created by its prior policy, or providing a rational explanation supported by the administrative record. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 28–39 (2020); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). Although agencies remain free to change course, they must "display awareness that [they are] changing position" and provide a reasoned explanation for doing so. *Fox Television*, 556 U.S. at 515.
47. Those principles apply with particular force here. For more than twenty-one years, DHS repeatedly determined that Petitioner could safely remain in the community under an Order of Supervision. Throughout that period, Petitioner complied with every reporting requirement, remained continuously available for removal, established substantial family and community ties, and never engaged in conduct suggesting that supervision had become ineffective. DHS's longstanding decision to supervise rather than detain Petitioner therefore reflected an ongoing administrative judgment that detention was unnecessary and that supervision adequately protected the Government's legitimate interests while removal remained impracticable.

48. Yet in January 2026, DHS abruptly revoked Petitioner's Order of Supervision and returned him to immigration detention without identifying any material change in the facts underlying its prior determination. Respondents have not identified any newly available travel document, any diplomatic development making removal realistically attainable, any violation of Petitioner's conditions of supervision, any evidence that Petitioner had become a flight risk or danger to the community, or any other circumstance explaining why twenty-one years of successful supervision suddenly became inadequate. The absence of any identified change in circumstance strongly suggests that the revocation was not the product of reasoned administrative decisionmaking but instead reflected an unexplained departure from DHS's own longstanding course of conduct.

49. The APA does not permit an agency to reverse decades of settled administrative practice through unexplained discretion alone. Where an agency abandons a longstanding policy that has created substantial reliance interests, it must acknowledge those interests and provide a reasoned explanation demonstrating why the prior policy no longer serves the governing statute. *Regents*, 591 U.S. at 31–39. Here, DHS has never explained why supervision that it deemed sufficient for more than two decades suddenly ceased to satisfy the objectives of 8 U.S.C. § 1231(a)(3), nor has it identified any administrative record demonstrating that it considered Petitioner's extraordinary history of compliance before revoking his liberty.

50. The arbitrary nature of Respondents' decision is further illustrated by the relationship between the revocation and the purpose of post-removal-order detention itself. Congress authorized detention under § 1231 only to facilitate the execution of a

removal order. Nothing in the record suggests that reincarcerating Petitioner after twenty-one years materially increased the likelihood that his removal could be accomplished. To the contrary, Respondents have continued to detain Petitioner for more than six months without identifying any realistic prospect of removal. The revocation therefore accomplished nothing except the deprivation of Petitioner's liberty, rendering the decision not only arbitrary under the APA but fundamentally inconsistent with the statutory purpose recognized in *Zadvydas*.

51. Accordingly, because DHS abandoned its own twenty-one-year course of administrative conduct without acknowledging the change, without identifying any material change in circumstances, without addressing Petitioner's substantial reliance interests, and without providing a reasoned explanation supported by the administrative record, its revocation of Petitioner's Order of Supervision was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of 5 U.S.C. § 706(2)(A). That unlawful agency action cannot serve as the basis for Petitioner's continued detention.

V. The Court Should Exercise Its Equitable Habeas Authority to Order Petitioner's Immediate Release

52. Habeas corpus has long been recognized as an equitable remedy designed to provide a swift and effective means of redressing unlawful restraints on liberty. When a court determines that continued executive detention exceeds constitutional or statutory limits, the traditional and appropriate remedy is release from unlawful custody, subject to reasonable conditions if necessary to ensure the Government's legitimate interests. See *Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001) (recognizing

supervised release as the constitutionally permissible alternative when continued detention is no longer justified); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (explaining that the writ must provide a meaningful and effective remedy for unlawful detention).

53. This case presents compelling equitable circumstances warranting the exercise of that authority. Petitioner has already demonstrated, through more than twenty-one years of successful compliance with an Order of Supervision, that he presents no practical obstacle to community supervision. During that period, he complied with every reporting requirement imposed by DHS, remained continuously available to immigration authorities, never absconded, and never engaged in conduct demonstrating that detention was necessary to secure compliance with the immigration laws. The Government's own history of supervising Petitioner in the community establishes that release under appropriate conditions adequately protects any legitimate governmental interest while respecting the constitutional limitations on prolonged detention.

54. The humanitarian circumstances further reinforce the appropriateness of immediate relief. Petitioner's wife has recently been diagnosed with a rare and aggressive form of breast cancer and is presently undergoing chemotherapy and radiation treatment. She faces an extraordinary medical and emotional ordeal at a time when Petitioner's continued detention prevents him from providing essential assistance with transportation, daily care, household responsibilities, emotional support, and family stability. Although these circumstances do not independently establish a constitutional violation, they underscore the severe and unnecessary hardship

resulting from a detention that no longer serves the statutory purpose of effectuating removal.

55. The balance of equities weighs overwhelmingly in Petitioner's favor. Respondents have not demonstrated that Petitioner presents a danger to the community, a flight risk, or any impediment to continued supervision. Nor have they demonstrated a significant likelihood that removal can be accomplished in the reasonably foreseeable future. Against those facts stands Petitioner's substantial liberty interest, his extraordinary record of compliance spanning more than two decades, and the pressing humanitarian needs of his family. Continued detention under these circumstances serves no legitimate governmental objective while inflicting profound and irreparable harm upon Petitioner and his wife.

56. Accordingly, should the Court conclude that Petitioner's continued detention violates the Constitution, the Immigration and Nationality Act, or the Administrative Procedure Act, the appropriate remedy is not further administrative delay but Petitioner's immediate release under reasonable conditions of supervision. Such relief restores the status quo that existed for more than twenty-one years, respects the constitutional limitations recognized in *Zadvydas*, and preserves the Government's ability to execute the removal order should removal later become reasonably foreseeable.

CLAIM FOR RELIEF

COUNT I

CONTINUED DETENTION IN VIOLATION OF 8 U.S.C. §1231(a)(6), THE DUE PROCESS CLAUSE AND 28 U.S.C. §2241

57. Petitioner incorporates by reference all preceding paragraphs.

58. As demonstrated above, Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6), as construed by *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 543 U.S. 371 (2005).

59. Petitioner has now remained in post-removal-order detention well beyond the six-month presumptively reasonable period recognized in *Zadvydas*.

60. Petitioner has established good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future, including through Respondents' own twenty-one-year course of conduct maintaining him on an Order of Supervision because removal could not be accomplished.

61. Respondents have failed to rebut that showing with individualized evidence demonstrating that Petitioner's removal is significantly likely within the reasonably foreseeable future.

62. Accordingly, Petitioner's continued detention exceeds the authority conferred by 8 U.S.C. § 1231(a)(6), violates the Due Process Clause of the Fifth Amendment, and entitles Petitioner to immediate habeas relief pursuant to 28 U.S.C. § 2241.

COUNT II
ARBITRARY AND CAPRICIOUS AGENCY ACTION IN VIOLATION OF THE
ADMINISTRATIVE PROCEDURE ACT

63. Petitioner incorporates by reference all preceding paragraphs.

64. Respondents revoked Petitioner's twenty-one-year Order of Supervision without identifying any material change in Petitioner's conduct, the foreseeability of removal, or any other circumstance justifying that reversal.

65. Respondents likewise failed to acknowledge Petitioner's substantial reliance interests, failed to explain their departure from more than two decades of consistent

agency practice, and failed to articulate a reasoned basis supported by the administrative record.

66. The revocation therefore constitutes arbitrary, capricious, and unlawful agency action in violation of 5 U.S.C. § 706(2)(A).

67. Because Petitioner's current detention rests upon that unlawful agency action, the detention likewise is unlawful.

COUNT III
IN THE ALTERNATIVE, REINSTATEMENT OF PETITIONER'S PRIOR ORDER OF SUPERVISION

68. Petitioner incorporates by reference all preceding allegations of this Petition as though fully set forth herein.

69. If the Court declines to order immediate release outright, Petitioner respectfully requests reinstatement of the Order of Supervision under which he successfully remained for more than twenty-one years, together with any reasonable reporting conditions the Court deems appropriate.

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. In the alternative, issue an expedited Order to Show Cause directing Respondents to appear and show cause why the writ should not issue, given the urgency of the

circumstances described herein. *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000);

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

DATED this 21st of July, 2026.

/s/Bonnie Smerdon
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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I, Bonnie Smerdon, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I am acting on behalf of the petitioner, Sergio Robles-Noa, 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 21st of July, 2026.

/s/Bonnie Smerdon
Bonnie Smerdon, Esq.