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Counsel for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO SANCHEZ DOMINGUEZ (A[redacted],

Petitioner,

v.

Christopher J. LaRose, Senior Warden, Otay Mesa Detention Center;
Daniel A. Brightman, San Diego Field Office Director, U.S. Immigration and Customs Enforcement;
Markwayne Mullin, Secretary of Homeland Security; and
Todd Blanche, Acting Attorney General of the United States,

Respondents.

Case No.: '26CV4335 JES AHG

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

IMMIGRATION DETENTION CASE —
EXPEDITED CONSIDERATION REQUESTED PURSUANT TO 28 U.S.C. § 2243

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner Eduardo Sanchez Dominguez, a 27-year-old native and citizen of Cuba, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause), and the Due Process Clause of the Fifth Amendment.

2. Mr. Sanchez Dominguez presented himself to U.S. immigration authorities at the Eagle Pass, Texas port-of-entry area on March 23, 2022, was inspected and detained, and was released from custody on parole pursuant to section 212(d)(5) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(d)(5). Since that time, he has lived openly in the United States, supported himself through self-employed agricultural work, and has never been arrested for or convicted of any crime anywhere in the world.

3. Because he is a Cuban national who was inspected and paroled into the United States and has been physically present for more than one year, Mr. Sanchez Dominguez is prima facie eligible for adjustment of status to that of a lawful permanent resident under the Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended (the "Cuban Adjustment Act" or "CAA") (codified as a note to 8 U.S.C. § 1255). An application for adjustment of status (Form I-485) invoking the CAA is being prepared for filing with U.S. Citizenship and Immigration Services ("USCIS").

4. On January 11, 2023, an Immigration Judge sitting in Detroit, Michigan ordered Mr. Sanchez Dominguez removed in absentia — at a hearing held more than six months before August 1, 2023, the hearing date stated in the Notice to Appear the government had served on him. Mr. Sanchez Dominguez never received notice that his hearing had been advanced; he did not attend because he did not know of it, and he would have appeared. On June 25, 2026, Immigration and Customs Enforcement ("ICE") arrested him at the Punta Gorda, Florida airport. On July 10, 2026, ICE transferred him across the country to the Otay Mesa Detention Center in San Diego, California, where he remains detained. ICE has provided him no custody hearing of any kind, has refused to release him or to permit him a meaningful opportunity to pursue his Cuban Adjustment Act application, and detains him for a removal to Cuba that is not significantly likely to occur in the reasonably foreseeable future.

5. Mr. Sanchez Dominguez does not ask this Court to review or set aside the removal order itself; he acknowledges that direct review of removal orders is channeled to the courts of appeals by 8 U.S.C. § 1252(a)(5) and (b)(9). Rather, he challenges the lawfulness of his present and ongoing physical detention, the procedures (and absence of procedures) attending it, and Respondents' refusal to afford him the process required by statute, regulation, and the Fifth Amendment. Such detention-based claims lie at the historic core of habeas corpus and remain squarely within this Court's jurisdiction. See *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001);

Demore v. Kim, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

6. Mr. Sanchez Dominguez respectfully requests that the Court issue an order to show cause pursuant to 28 U.S.C. § 2243, declare his detention unlawful, and order his release under reasonable conditions of supervision or, in the alternative, order a prompt individualized custody hearing before a neutral adjudicator at which the government bears the burden of justifying continued detention.

II. CUSTODY, JURISDICTION, AND VENUE

7. Mr. Sanchez Dominguez is in the physical custody of Respondents at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, within the Southern District of California. He is "in custody" within the meaning of 28 U.S.C. § 2241(c)(1) and (c)(3).

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the Constitution. The Court may grant relief under 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

9. The limitations on judicial review contained in 8 U.S.C. § 1252 do not divest district courts of jurisdiction over challenges to the fact, duration, or conditions of immigration detention, as distinct from challenges to removal orders. See *Zadvydas*, 533 U.S. at 688; *Jennings,* 583 U.S. at 293–95; *Department of*

Homeland Security v. Thuraissigiam, 591 U.S. 103, 117 & n.12 (2020) (discussing scope of habeas).

10. Venue is proper in the Southern District of California because Mr. Sanchez Dominguez is confined in this District and his immediate custodian is located here. A petition challenging present physical confinement is properly filed in the district of confinement against the petitioner's immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35, 443 (2004); *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973); see *Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024). Assignment to the San Diego Division is proper because the events giving rise to this action. Petitioner's confinement, occur in San Diego County.

III. PARTIES

11. Petitioner Eduardo Sanchez Dominguez (A [redacted]), born [redacted], is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego, California.

12. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center and is Petitioner's immediate custodian. He is sued in his or her official capacity.

13. Respondent Daniel A. Brightman is the Field Office Director of the San Diego Field Office of ICE Enforcement and Removal Operations, exercises day-to-day

legal custody and control over Petitioner, and has authority to release him. He is sued in his or her official capacity.

14. Respondent Markwayne Mullin is the Secretary of Homeland Security, with ultimate authority over the administration of the immigration laws and the detention and removal of noncitizens, 8 U.S.C. § 1103(a), and is sued in his official capacity.

15. Respondent Todd Blanche is the Attorney General of the United States, with authority over the Executive Office for Immigration Review, 8 U.S.C. § 1103(g), and is sued in his official capacity.

IV. EXHAUSTION

16. There is no statutory exhaustion requirement applicable to a habeas petition under 28 U.S.C. § 2241 challenging immigration detention, and any prudential exhaustion is excused where, as here, no administrative forum can grant the relief sought and resort to administrative remedies would be futile. Petitioner is detained under 8 U.S.C. § 1231 pursuant to an administratively final removal order; the immigration court and the Board of Immigration Appeals afford no bond process to persons in his position, and ICE has not provided, and has refused to provide, any custody review. Further exhaustion would be futile.

V. STATEMENT OF FACTS

17. Mr. Sanchez Dominguez fled Cuba and arrived in the United States at Eagle Pass, Texas, on March 23, 2022, where he was inspected, processed, and briefly detained by the Department of Homeland Security ("DHS").

18. DHS released Mr. Sanchez Dominguez from custody on parole pursuant to INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).

19. His parole was authorized on March 24, 2022, with a stated validity period through April 9, 2022. (Ex. A (Form I-94)).

20. On September 14, 2022, DHS issued and served on Mr. Sanchez Dominguez a Notice to Appear placing him in removal proceedings under INA § 240, 8 U.S.C. § 1229a. The Notice to Appear was sent to, and received at, the correct address where he resided with his aunt, and it directed him to appear before the Immigration Court in Detroit, Michigan on August 1, 2023, at 1:00 p.m. The Notice to Appear did not designate him as an "arriving alien." (Ex. B (Notice to Appear)).

21. At some point thereafter, the Immigration Court apparently advanced the hearing from August 1, 2023 to January 11, 2023. Neither Mr. Sanchez Dominguez nor his aunt, with whom he resided, and continued to reside, at the address stated on the Notice to Appear, where he regularly received mail, ever received a notice of hearing under 8 U.S.C. § 1229(a)(2), or any other communication, advising that the hearing had been rescheduled or advanced to January 11, 2023. Had Mr.

Sanchez Dominguez received notice of the January 11, 2023 hearing, he would have appeared.

22. On January 11, 2023, more than six months before the hearing date stated in the government's own charging document, an Immigration Judge in Detroit ordered Mr. Sanchez Dominguez removed in absentia pursuant to 8 U.S.C. § 1229a(b)(5)(A) when he failed to appear at a hearing of which he had never been notified.

23. Upon learning of the order, Mr. Sanchez Dominguez moved to reopen and rescind the in-absentia order for lack of notice pursuant to 8 U.S.C. § 1229a(b)(5)(C). The Immigration Judge denied the motion on January 2, 2024. No appeal was taken since Mr. Sachez Dominguez lacked the continuing resources to retain counsel for that appeal.

24. Since his 2022 parole, Mr. Sanchez Dominguez has resided continuously in the United States, has supported himself through self-employed farm work, has paid his own way, and has no criminal history whatsoever.

25. Mr. Sanchez Dominguez is prima facie eligible for adjustment of status under section 1 of the Cuban Adjustment Act: he is a native and citizen of Cuba; he was inspected and paroled into the United States under INA § 212(d)(5) after January 1, 1959; he has been physically present in the United States for more than one year; and he is admissible to the United States as a permanent resident. His Form

I-485 application under the CAA is being prepared for filing with USCIS as he is not an arriving alien, together with supporting evidence.

26. On June 25, 2026, ICE officers arrested Mr. Sanchez Dominguez at the Punta Gorda, Florida airport. ICE provided no advance notice of any kind, no statement of reasons, and no opportunity to respond. At no time between the stated April 9, 2022, expiration of his parole document and his arrest, including the three and one-half years following entry of the removal order, did Respondents serve him with any custody determination, order of supervision, or other notice concerning his custody status.

27. On July 10, 2026, ICE transferred Mr. Sanchez Dominguez from Florida to the Otay Mesa Detention Center in San Diego, California, approximately 2,400 miles from his home, his work, his community ties, and the evidence and witnesses relevant to his claims.

28. ICE detains Mr. Sanchez Dominguez under color of 8 U.S.C. § 1231 based on the January 11, 2023, in absentia order. Because a removal order entered on that date became administratively final long ago, the ninety-day statutory "removal period," 8 U.S.C. § 1231(a)(1)-(2), has long since expired, and any present detention authority arises, if at all, under the discretionary provision of 8 U.S.C. § 1231(a)(6).

29. ICE has not provided Mr. Sanchez Dominguez with a bond hearing, has taken the position that no bond hearing is available because a removal order exists, and has

not conducted or scheduled the post-order custody review required by 8 C.F.R. § 241.4.

30. Mr. Sanchez Dominguez's removal is not significantly likely in the reasonably foreseeable future, and the most probative evidence is the record of his own case. His removal order has been outstanding, and wholly unexecuted, since January 11, 2023, approximately three and one-half years. In all that time, Respondents never detained him, never presented him to the Government of Cuba for verification of identity and nationality, never obtained (or, on information and belief, ever requested) a travel document for him, and never scheduled or attempted his removal. On information and belief, no Cuban consular official has ever interviewed Mr. Sanchez Dominguez, and no travel document authorizing his return to Cuba exists today.

31. The structure of United States/Cuba repatriation corroborates that showing. Cuba accepts removals from the United States only pursuant to bilateral migration accords, including the accord of December 14, 1984, the Joint Communiqué of September 9, 1994, the Joint Statement of May 2, 1995, and the Joint Statement of January 12, 2017, under which the Government of Cuba verifies and approves each returnee individually and must issue a travel document before removal may occur. Removal flights to Cuba, suspended entirely during the COVID-19 pandemic, resumed only in April 2023 and have since operated on an approximately monthly schedule of limited capacity. Publicly available data

compiled from DHS and Cuban Ministry of the Interior sources reflect approximately 3,142 removals to Cuba in 32 flight operations from April 2023 through mid-June 2026, including approximately 612 removals in the first five months of 2026, while ICE arrests of Cuban nationals increased by more than 400 percent over the same enforcement period and the population of Cuban nationals with unexecuted final orders of removal numbers in the tens of thousands. Whatever that limited pipeline may portend for others, there is no evidence that Cuba has approved, verified, or documented Mr. Sanchez Dominguez, and the arithmetic of an approximately monthly flight measured against a backlog of that size confirms that his removal is not significantly likely in the reasonably foreseeable future.

32. Meanwhile, detention is destroying the very opportunity Congress extended to Mr. Sanchez Dominguez: if Respondents remove him before USCIS can adjudicate his Cuban Adjustment Act application, that statutory remedy will be extinguished, because CAA adjustment requires presence in the United States.

VI. CLAIMS FOR RELIEF

COUNT ONE

Detention Without Statutory Authority

8 U.S.C. § 1231(a)(6) as Construed in *Zadvydas v. Davis and Clark v. Martinez*

33. Petitioner realleges and incorporates all preceding paragraphs.

34. Detention under 8 U.S.C. § 1231(a)(6) is limited to the period reasonably necessary to bring about removal and does not authorize indefinite detention; once removal is no longer significantly likely in the reasonably foreseeable future, continued detention is unauthorized by statute. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). That construction applies with equal force to noncitizens, like Petitioner, who are treated as applicants for admission or inadmissible. *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (applying *Zadvydas* to Cuban (Mariel) detainees).

35. Petitioner's removal period expired years before his June 25, 2026, arrest and his removal to Cuba is not significantly likely in the reasonably foreseeable future. His continued detention exceeds any authority conferred by § 1231(a)(6) and is unlawful. In the alternative, even if the six-month presumptively reasonable period identified in *Zadvydas* is measured from June 25, 2026, Petitioner has come forward with good reason to believe removal is not reasonably foreseeable, and the writ should issue upon Respondents' failure to rebut that showing.

COUNT TWO

Fifth Amendment — Procedural Due Process: Detention Without Any Individualized Custody Hearing

36. Petitioner realleges and incorporates all preceding paragraphs.

37. Freedom from imprisonment lies at the heart of the liberty the Due Process Clause protects, and civil detention violates due process, absent adequate procedural

protections and a sufficient regulatory justification. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *United States v. Salerno*, 481 U.S. 739, 746, 750–51 (1987).

38. Respondents have detained Petitioner, a man with no criminal history, years of peaceable residence, stable self-employment, and a prima facie path to permanent residence, without any hearing before any neutral decision-maker on flight risk or danger, and with no scheduled process at which he could ever be heard. Under the framework of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), due process requires, at minimum, a prompt individualized custody hearing before a neutral adjudicator at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or a danger, with consideration of alternatives to detention. See *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011). This claim arises directly under the Due Process Clause of the Fifth Amendment and does not depend on the continued statutory vitality of those decisions.

39. Independently, Petitioner possessed a protected liberty interest in his continued release. Respondents released him in 2022 and left him at liberty for more than four years, including three and one-half years after his removal order became final, reflecting the government's own sustained judgment that he required no detention. The Due Process Clause required, at minimum, notice of the reasons for revoking that release and a prompt individualized hearing before a neutral decision-maker;

Respondents provided neither, before or since the June 25, 2026, arrest. Judges of this District and others within the Ninth Circuit have recently held that previously released noncitizens possess a protected liberty interest in remaining free from re-detention and are entitled to notice and a hearing at which the government bears the burden of justifying re-detention by clear and convincing evidence. *Chel v. LaRose*, No. 3:26-cv-01114-LL-BLM (S.D. Cal. Apr. 6, 2026) (ordering immediate release of re-detained Otay Mesa petitioner subject to preexisting conditions of release, with notice and a pre-deprivation hearing required before any re-detention); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB (S.D. Cal. Oct. 1, 2025); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Martinez Hernandez v. Andrews*, No. 1:25-cv-01035-JLT-HBK, 2025 WL 2495767 (E.D. Cal. Aug. 28, 2025) (preliminary injunction requiring bond hearing). This claim is ripe now: the process was due when the deprivation occurred, and it does not depend on the duration of the ensuing detention.

COUNT THREE

Violation of Binding Regulations

8 C.F.R. §§ 212.5(e) and 241.4; *Accardi* Doctrine

40. Petitioner realleges and incorporates all preceding paragraphs.

41. An agency must follow its own regulations, and action taken in violation of them cannot stand. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68

(1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); see *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979).

42. Petitioner's parole document authorized parole from March 24, 2022, through April 9, 2022. The regulatory violations here accordingly take one of two forms, and either one renders his detention unlawful. If Respondents' position is that the parole expired by its own terms, see 8 C.F.R. § 212.5(e)(1), then Petitioner, whom Respondents thereafter left at liberty for more than four years, including three and one-half years after his removal order became final, was seized and imprisoned without any predicate process whatsoever: no notice, no custody interview, no individualized determination, and no post-order custody review under 8 C.F.R. § 241.4 or determination under 8 C.F.R. § 241.13, although on Petitioner's account the removal period expired in 2023. If instead Respondents treated the parole as continuing beyond its stated expiration, as their own sustained non-enforcement might suggest, then its termination required the individualized written notice contemplated by 8 C.F.R. § 212.5(e)(2), which was never provided. And if Respondents at any point released Petitioner on an order of supervision following the removal order, the revocation of that release was subject to the requirements of 8 C.F.R. §§ 241.4(l) and 241.5, with which Respondents likewise did not comply. These violations of binding regulations, which exist for Petitioner's benefit and prejudiced him, render his continued detention unlawful.

COUNT FOUR

Fifth Amendment

Deprivation of the Statutory Opportunity to Pursue Cuban Adjustment Act Relief

43. Petitioner realleges and incorporates all preceding paragraphs.

44. In the Cuban Adjustment Act, Congress created a durable, sui generis path to permanent residence for Cuban nationals who have been inspected and admitted or paroled and physically present for one year. Pub. L. No. 89-732, § 1, 80 Stat. 1161. Petitioner satisfies the statute's threshold criteria by virtue of his actual INA § 212(d)(5) parole, not the "conditional parole" found insufficient in *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023), and not the speculative future parole found insufficient in *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025).

45. Respondents' detention of Petitioner, their refusal to release him or defer his removal while USCIS adjudicates his application, and their stated intention to remove him, which would extinguish his CAA eligibility, arbitrarily deprive him of a congressionally conferred opportunity in violation of the Due Process Clause and constitute an abuse of the detention power, which may be used only to effectuate lawful removal, not to defeat lawful relief.

COUNT FIVE

Fifth Amendment and Suspension Clause

Detention Pursuant to an In Absentia Order Entered Without Notice

46. Petitioner realleges and incorporates all preceding paragraphs.

47. An in-absentia removal order may be entered only upon the written notice required under 8 U.S.C. § 1229(a), and must be rescinded, upon a motion filed at any time, if the noncitizen demonstrates that he did not receive notice in accordance with § 1229(a)(1) or (a)(2). 8 U.S.C. § 1229a(b)(5)(A), (C)(ii). Under *Campos-Chaves v. Garland*, 602 U.S. 447, 459–62 (2024), the dispositive question is whether the noncitizen received the notice for the specific hearing he missed. The hearing Mr. Sanchez Dominguez missed was held on January 11, 2023. The only notice he ever received, the Notice to Appear served September 14, 2022 at his correct address, directed him to appear on August 1, 2023, a date more than six months after the hearing at which he was ordered removed, and no notice under § 1229(a)(2) of the advanced January 11, 2023 hearing was ever received at his address. The in-absentia order was therefore entered without the notice the statute and the Due Process Clause require.

48. Petitioner does not ask this Court to vacate the removal order, and he acknowledges that 8 U.S.C. § 1252(a)(5) and (b)(9) channel review of removal orders to the courts of appeals. He asserts, however, that his physical detention premised exclusively on an order entered without the notice the Constitution and statute require violates due process, and that, as applied, the elimination of any forum in which he can presently test the legality of that detention would violate the Suspension Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Issue an order directing Respondents to show cause, within three days or such short time as the Court allows, why the writ should not be granted, 28 U.S.C. § 2243, and set an expedited schedule;

(b) Declare that Petitioner's detention violates 8 U.S.C. § 1231(a)(6), the Due Process Clause of the Fifth Amendment, and 8 C.F.R. §§ 212.5(e) and 241.4;

(c) Grant the writ and order Petitioner's immediate release under reasonable conditions of supervision;

(d) In the alternative, order Respondents to provide Petitioner, within seven days, an individualized custody hearing before a neutral adjudicator at which the government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger or a flight risk, with consideration of his ability to pay any bond and of alternatives to detention;

(e) Order Respondents not to transfer Petitioner outside the Southern District of California while this petition is pending, and to provide counsel and the Court at least fourteen days' advance written notice of any intended removal of Petitioner from the United States, so that the Court retains the ability to adjudicate this petition;

(f) Award reasonable costs and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(g) Grant such other and further relief as the Court deems just and proper.

Dated: July 20, 2026

Respectfully Submitted,

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Counsel for Petitioner

VERIFICATION

I, Abraham B. Cardenas, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge and belief, the foregoing facts are true and correct based upon information available to me at this time.

Executed on July 16, 2026, at Miami, Florida.

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