IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Emilio San Roman-Gonzalez, Petitioner, v. **Markwayne Mullin**, Secretary, Department of Homeland Security; **Todd Blanche**, Attorney General; **David Venturella**, Acting Director, Immigration and Customs Enforcement; and **David Easterwood**, Acting Director, St. Paul Field Office Immigration and Customs Enforcement; Respondents.	Civil No.: 0:26-cv-04184 **PETITION FOR WRIT OF HABEAS CORPUS** **8 U.S.C. § 1231** **28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Emilio San Roman-Gonzalez, by and through undersigned counsel, hereby files this petition for a writ of habeas corpus to require United States Immigration and Customs Enforcement ("ICE") to release Petitioner from ICE detention. Petitioner's prolonged detention exceeds the limits imposed by the Supreme Court's Fifth Amendment analysis in *Zadvydas v. Davis*. Because Petitioner has been detained for over six months and Respondents cannot deport him, the Court should order his release.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331

(federal question), § 1361 (federal employee *mandamus* action), § 1651 (All Writs Act), and § 2241 (*habeas corpus*); Art. I, § 9, cl. 2 of the U.S. Constitution ("Suspension Clause");; and 28 U.S.C. § 2201 (Declaratory Judgment Act).

3. Federal question jurisdiction exists because Petitioner seeks to challenge custody as a violation of the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. ("INA").

4. Because Petitioner seeks to challenge his custody as a violation of the Constitution, laws, or treaties of the United States, jurisdiction is proper in this court. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas* petitions by noncitizens challenging the lawfulness of their detention. *See Zadvydas*, 533 U.S. 678, 687 (2001) ("[T]he primary federal *habeas corpus* statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases."); *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 920–21 (D. Minn. 2006).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1), and 2241(d) because Petitioner is detained within this District, some of the Respondents reside and/or are headquartered within this District, and a substantial part of the events and omissions giving rise to the claim occurred within this District. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A), because Respondents operate in this District.

EXHAUSTION

6. No statutory requirement of administrative exhaustion applies to Petitioner's challenge to the unlawfulness of his detention. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025). Moreover, the judicially created "general rule that parties exhaust

prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

PARTIES

7. Petitioner Emilio San Roman-Gonzalez lives in the State of Minnesota. Petitioner is a native of Cuba. He has an administratively final order of removal, issued in 1997. He was detained by federal agents on March 3, 2026, upon his release from the Minnesota Correction Facility in Faribault, Minnesota. He is currently detained at the Crow Wing County Jail in Brainerd, Minnesota.

8. Respondent Markwayne Mullin is being sued in his official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Mullin is responsible for the administration and implementation of federal immigration policies, including those that resulted in the arrest and detention of Petitioner. Secretary Mullin is a legal custodian of Petitioner.

9. Respondent Todd Blanche is being sued in his official capacity as the Acting Attorney General of the United States and the head of the Department of Justice. Attorney General Blanche shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Mullin. Attorney General Blanche is a legal custodian of Petitioner.

10. Respondent David Venturella is being sued in his official capacity as the Acting Director of Immigration and Customs Enforcement, a sub-unit of the Department

of Homeland Security. In that capacity, Acting Director Venturella is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner.

11. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Acting Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The St. Paul Field Office is located in Fort Snelling, Minnesota.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

PETITIONER'S IMMIGRATION HISTORY AND STATUS

12. Petitioner is a 69-year-old native of Cuba. He came to the United States on July 11, 1980, at the age of 23, as a refugee from Cuba. *See Emilio S.R.G. v. Mullin,* No. 26-CV-2189 (KMM/DLM), 2026 WL 2013799, at *1 (D. Minn. May 11, 2026) (hereinafter "*Emilio I R&R*"), *R. & R. rejected*, 2026 WL 1810416 (D. Minn. June 24, 2026) (hereinafter "*Emilio I Order*"). Petitioner boarded a boat to escape destitution and oppression in his home country, as a part of an exodus of around "125,000 Cubans who had entered the United States . . . in a mass migration now known as the 'Mariel Boatlift.'" *See* Alexander M. Stephens, *Making Migrants "Criminal": The Mariel Boatlift, Miami, and U.S. Immigration Policy in the 1980s*, 17 Anthurium, no. 2, art. 4, at 1 (2021).

13. " On June 12, 1990, Petitioner was released from USINS custody on parole by a USINS Cuban Review Panel" under the special parole status that many Mariel Cubans received. *See Emilio I R&R*, 2026 WL 2013799, at *1; 8 C.F.R. § 212.12. However, he was ordered removed in 1997, following a series of criminal convictions. *Id.*

14. Petitioner has a lengthy criminal record. In 1986, he was convicted of retail theft in the Woods Cross Justice Court (Utah) and larceny in the 2nd Circuit Court of Ogden (Utah). In 1987, he was convicted of carrying a concealed weapon and burglary/felony theft in the 2nd Circuit Court of Ogden (Utah). After his period of incarceration in Utah, Petitioner moved to Minnesota. In 1994, he was convicted of misdemeanor 5th degree domestic assault and misdemeanor 5th degree assault (fear). *State v. Gonzales Sanramon*, No. 27-CR-94-074378 (Minn. Dist. Ct. Sept. 1, 1994); *State v. Gonzales Sanramon*, No. 27-CR-94-077988 (Minn. Dist. Ct. Oct. 3, 1994). In 1995, he was convicted of offering a forged check. *State v. San Ramon Gonzalez*, No. 82-K8-95-002983 (Minn. Dist. Ct. Oct. 30, 1995). In 1997, he was convicted of felony 5th degree possession of crack cocaine. *State v. Gonzales Sanramon*, No. 27-CR-97-027347 (Minn. Dist. Ct. Apr. 16, 1997). In 1998, he was convicted of felony 5th degree possession. *State v. Gonzales Sanramon*, No. 27-CR-98-043774 (Minn. Dist. Ct. June 22, 1998). In 2001, he was convicted of felony 2nd degree assault with a deadly weapon, a felony attempted 2nd degree controlled substance crime, and a felony 4th degree controlled substance crime. *State v. Gonzales Sanramon*, No. 03-KX-01-000591 (Minn. Dist. Ct. Sept. 17, 2001); *State v. Gonzales Sanramon*, No. 03-K3-01-000772 (Minn. Dist. Ct. Sept. 17, 2001); *State v. Gonzales Sanramon*, No. 03-K3-01-000771 (Minn. Dist. Ct. Sept. 17, 2001). In 2008, he was convicted of two counts of felony 4th degree sale of a controlled substance and felony receiving stolen property. *State v. Gonzales Sanramon*, No. 03-CR-07-244 (Minn. Dist. Ct. July 7, 2008); *State v. Gonzales Sanramon*, No. 03-CR-07-871 (Minn. Dist. Ct. July 7, 2008). In 2014, he was convicted of misdemeanor theft and misdemeanor failure to

properly keep or restrain a dangerous dog. *State v. Gonzalez-Sanroman*, No. 03-CR-13-2528 (Minn. Dist. Ct. Mar. 19, 2014); *State v. Gonzales Sanramon*, No. 03-CR-14-1605 (Minn. Dist. Ct. Sept. 29, 2014). In 2015, he was convicted of felony 3rd degree sale of a narcotic. *State v. Gonzales Sanramon*, No. 03-CR-15-908 (Minn. Dist. Ct. Apr. 17, 2015). In 2022, he was convicted of unlawful possession of marijuana paraphernalia in Cass County District Court (North Dakota). In 2023, he was convicted of a felony possession of ammunition or firearms. *State v. Gonzalez-Sanroman*, No. 14-CR-22-4059 (Minn. Dist. Ct. May 15, 2023).

15. Petitioner was ordered removed by an immigration judge on October 28, 1997. But there are often major legal barriers to deporting Cuban nationals. For decades, Cuba refused to accept deportees from America, repeatedly refusing to agree to repatriation agreements. Annasofia A. Roig, Note, *No Way, USA!: The Lack of a Repatriation Agreement with Cuba and its Effects on U.S. Immigration Policies*, 13 Fla. Int'l Univ. L. Rev. 875, 877 (2019). In 1995, Cuba agreed to accept deportees who were caught while still at sea, but continued to refuse any other repatriations. *Id.* After some back and forth policy changes during the Obama and first Trump administrations, *Id.* at 882, the current state of affairs is that Cuba will accept roughly one deportation flight a month from America. *See* Carol Rosenberg, *The Journey of a Group of Cuban Deportees Stuck at Guantánamo*, N.Y. Times (Jan. 28, 2026), https://www.nytimes.com/2026/01/28/us/politics/cubans-gitmo-deportations.html; Syra Ortiz Blanes, *Cuba Takes Back Deportees with U.S. Rap Sheets Amid Growing Pressure from Administration*, Mia. Herald (Feb. 19, 2026, at 6:32 P.M.), https://www.miamiherald.com/news/nation-world/world/americas/cuba/arti

cle314758606.html (reporting data from "Human Rights First, an advocacy group that tracks deportation flights" finding that "there were 12 removal flights carrying at least 1,379 Cuban nationals" in 2025, which was the same as in 2024).

16. Cuban refugees who were ordered deported, but not accepted by Cuba, whether because of legal protections or Cuba's refusal to accept them, were almost universally released on parole or orders of supervision,[1] with required annual check-ins with INS and then ICE.

17. Similarly, the U.S. Government has been unable to execute Petitioner's removal order for 29 years. Petitioner served 115 days of immigration detention at the time of his initial order for removal. At that time, "Petitioner was again released from USINS custody on parole status by a USINS Cuban Review Panel." *Emilio I R&R*, 2026 WL 2013799, at *1. Petitioner served additional periods of immigration detention in 2004, 88 days, and 2008 to 2009, 93 days, totaling 181 days. *See* Decl. of Deportation Officer Angela Minner at ¶¶ 26–27, 31–32 *Emilio S.R.G. v. Mullin,* No. 26-CV-2189 (KMM/DLM) (D. Minn. Apr. 22, 2026).

18. In 2009, ICE released Petition on an order of supervision "due to Cuban government's unwillingness to accept [him] back." *Id.* at ¶ 32. Cuba has continually and

[1] After the landmark decision in *Zadvydas v. Davis*, discussed in Paras. 50–52, *infra*, DHS implemented the Supreme Court's "requirements through regulations governing post-removal order custody determinations. See 8 C.F.R. §§ 241.4, 241.13." *Reinaldo Q. v. Noem*, No. 26-CV-1699 (JWB/DJF), 2026 WL 1231799, at *2 (D. Minn. Mar. 9, 2026). It was these regulations which gave rise to the current iteration of the order of supervision. Prior to 2001, ICE's predecessor, the Immigration and Naturalization Service, would often utilize a form of supervised release often referred to as "parole," separate from the specific Mariel Cuban parole which governed Petitioner's admission into the United States.

to this day refused to accept Petitioner.

19. Petitioner admits that, over almost two decades, he has demonstrated continual noncompliance with his obligation to check in with ICE upon request. *See Emilio I R&R*, 2026 WL 2013799, at *2–3.

PETITIONER'S DETENTION AND PREVIOUS CASE

20. On March 3, 2026, ICE agents arrested Petitioner upon his release from the Minnesota Correction Facility in Faribault, Minnesota. *See id.* Petitioner had just completed a three-year sentence for felony possession of ammunition or firearms. *See id.*; *State v. Gonzalez-Sanroman*, No. 14-CR-22-4059 (Minn. Dist. Ct. May 15, 2023).

21. The same day Petitioner was arrested, ICE served Petitioner with a Notice of Third Country Removal for Mexico. *Emilio I R&R*, 2026 WL 2013799, at *3 (citing Dkt. 6-7). Five days later, "ICE then served Petitioner with a Warning for Failure to Depart and Instruction Sheet, informing him of the legal consequences should he fail to comply with the final order of removal." *Id.*

22. Petitioner was then shuttled from Minnesota to Louisiana and then Arizona "in preparation for removal to Mexico." *Id.* at *3. However, Petitioner was not removed to Mexico. Petitioner was detained for around eight days in Arizona, where he waited to be removed. During this time, Petitioner did nothing to prevent his removal.

23. But a month later, during Petitioner's first habeas proceeding, Respondents conclusorily claimed that "On or about March 25, 2026, [Petitioner] refused to comply with removal to Mexico." Decl. of Deportation Officer Angela Minner at ¶ 51, *Emilio S.R.G. v. Mullin,* No. 26-CV-2189 (KMM/DLM) (D. Minn. Apr. 22, 2026). To date,

Respondents have never explained how Petitioner refused to comply with removal to Mexico or produced any evidence of such refusal, beyond the conclusory statements in a self-serving declaration produced solely for the purposes of litigation. *See id.*

24. Rather, Petitioner articulated to Respondents a fear that, if he was removed to Mexico, he would face persecution, violence, and even death because of his gang affiliations in the United States. This is precisely the sort of fear-based claim in response to third country removal that Respondents have wantonly disregarded and trampled, leading the First Circuit to "require that noncitizens be provided with effective notice and a meaningful opportunity to present a fear-of-torture claim before DHS may remove them to a third country." *D.V.D v. U.S. Dep't of Homeland Sec.*, No. 26-1212, 2026 WL 2797801, at *16 (1st Cir. Sept. 18, 2026) (issuing nationwide relief).

25. On March 31, 2026, Petitioner was transferred back to the Sherburne County Jail in Elk River, Minnesota. *Id.* at ¶ 52.

26. On April 9, 2026, Petitioner filed his first petition for a writ of habeas corpus. Petition, *Emilio S.R.G. v. Mullin*, No. 26-CV-2189 (KMM/DLM) (D. Minn. Apr. 9, 2026) (Dkt. 1). Petitioner alleged violations of his rights under 8 U.S.C. § 1231, the Fourth and Fifth Amendments, an *Accardi* Doctrine claim premised on failure to comply with regulations concerning his supervised release. *Id.* at ¶¶ 46–65.

27. On May 11, 2026, Magistrate Judge Douglas L. Micko issued a Report and Recommendation recommending Petitioner's release. *Emilio I R&R*, 2026 WL 2013799, at *7. Specifically, the R&R found that "that the government violated its regulations when it conducted Petitioner's informal interview on the same day that it arrested him

immediately upon his release from a three-year prison sentence," which ""deprived Petitioner of a meaningful opportunity to contest his detention, which violated his due process rights." *Id.* at *6 (quoting *Kiwana v. LaRose*, No. 25-CV-3678 (JES/SBC), 2026 WL 102661, at *5 (S.D. Cal. Jan. 14, 2026)).

28. On June 24, 2026, the Court rejected the R&R, "disagree[ing] with Mr. S.R.G. that more process was required" than ICE offered. *Emilio I Order*, 2026 WL 1810416, at *2. The Court then granted leave for Petitioner to raise additional claims not considered by the R&R.

29. On July 23, 2026, Petitioner's first habeas proceeding ended when the Court denied Petitioner relief one more time. Order at 1, *Emilio S.R.G. v. Mullin*, No. 26-CV-2189 (KMM/DLM) (D. Minn. July 23, 2026) (Dkt. 21). The Court did not offer analysis of Petitioner's challenges to his arrest, but found that Respondents' allegations that Petitioner interfered with his removal to Mexico justified his continued detention. *Id.* at 2.

RESPONDENTS HAVE FAILED TO REMOVE PETITIONER

30. Yet here are. Petitioner is still in the United States two months later, where he is now detained at the Crow Wing County Jail in Brainerd, Minnesota.

31. On information and belief, Mexico has refused to accept Petitioner for third-country removal. The facts concerning Mexico's disposition toward Petitioner are entirely within Respondents' position, but the fact that Petitioner was Arizona, not removed, and brought back strongly indicates that Mexico refused to accept him.

32. Petitioner disputes that he took any action which prevented his removal to Mexico. In fact, Petitioner disputes that he even could have taken any action to prevent his

removal to Mexico, as neither ICE nor Mexico requires the consent of a deportee or any sort of collaboration to effect a third country removal to Mexico.

33. At this time, Petitioner has been continuously detained by Respondents for 210 days, around 7 months, and the U.S. Government has been unable to execute his removal order at any point during that detention or the 29 preceding years. Further, Petitioner has been detained for 188 days since the date Respondents allege he interfered with his removal to Mexico. There is no indication the Government can remove Petitioner or is making any additional efforts to execute his removal order beyond their failed attempt to deport him to Mexico.

34. After failing to remove Petitioner to Mexico, ICE "referred [his] case to DHS Headquarters for nomination to an alternate third country." Decl. of Deportation Officer Angela Minner at ¶ 54, *Emilio S.R.G. v. Mullin,* No. 26-CV-2189 (KMM/DLM) (D. Minn. Apr. 22, 2026). However, since that time, ICE has never provided Petitioner with any information about or evidence of any other potential third country for removal. Nor have they provided him with any of the due process required by *D.V.D v. DHS. See* 2026 WL 2797801 at *16.

35. On information and belief, ICE does not currently have a plan to remove Petitioner to Cuba, Mexico or any other country, nor has ICE obtained travel documents for Petitioner. Petitioner does not have a Cuban passport and has not filled out an application for a travel document. No third country has agreed to accept Petitioner from the United States. Petitioner has not purposefully or intentionally acted to prevent his

removal at any time, but at least not since March 25, 2026.[2]

36. On information and belief, there is no valid, written third country removal agreement that would permit Respondents to remove Petitioner to a third country such as Mexico.

37. As a result, Respondents' detention of Petitioner under 8 U.S.C. § 1231 is unlawful and additionally the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Without the intervention of this Court, Petitioner believes that Respondents will continue to detain him indefinitely, without regard for the mandates of the U.S. Constitution, the Immigration and Nationality Act, and the agencies' own rules and regulations.

38. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release from detention on an order of supervision.

LEGAL FRAMEWORK

HABEAS PETITIONS

39. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful or unconstitutional detention, including noncitizens detained by federal immigration authorities. *See, e.g., Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 900–01 (D. Minn. 2020). "The Great Writ is 'a vital instrument' to protect individual liberties, and is an essential check on abuses of government power," particularly against "'arbitrary imprisonments,' which 'have been, in all ages, the favorite and most

[2] Petitioner disputes that raising his fear-based claim concerning third-country removal to Mexico constituted an improper refusal to comply with his removal.

formidable instruments of tyranny.'" *Tou V. v. Bondi*, No. 26-CV-1831, slip op. at 2 (D. Minn. Feb. 18, 2026) (quoting *Boumediene v. Bush*, 553 U.S. 723, 743–45 (2008)).

40. A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or a federal law. 28 U.S.C. § 2241(c)(3). Such a petition should be granted if the petitioner proves the illegality of the detention by a preponderance of evidence. *Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 703 (D. Minn. 2025).

POST-REMOVAL DETENTION UNDER 8 U.S.C. § 1231

41. The Due Process Clause of the Fifth Amendment to the Constitution prohibits the United States government from depriving any person of their liberty "without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

42. The Fifth Amendment Due Process Clause also requires that Respondents follow procedures that are adequate to establish that detention is both statutorily and constitutionally valid. *See Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.").

43. Noncitizens "detained pending a final removal order, pursuant to 8 U.S.C. § 1231, retain their liberty interests such that prolonged or indefinite detention presents significant due process concerns." *Hussein S.M. v. Garland*, No. 21-CV-348, slip op. at 5 (D. Minn. May 18, 2021) (citing *Zadvydas*, 533 U.S. at 699). If the "detention's goal is no

longer practically attainable," detention becomes unreasonable and therefore violates the Fifth Amendment right to due process. *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

44. Under 8 U.S.C. § 1231, noncitizens with a final order of removal shall be removed from the United States within a period of 90 days. 8 U.S.C. § 1231(a)(1)(A).

45. The beginning of the 90-day removal period is determined by the latest of the following:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. at § 1231(a)(1)(B).

46. During the removal period, the noncitizen may be detained, and may not be released under any circumstances if found inadmissible or deportable on criminal or national security grounds. *Id.* at § 1231(a)(2).

47. If the noncitizen is not removed during the 90-day period, he or he "shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien

> (A) to appear before an immigration officer periodically for identification;
>
> (B) to submit, if necessary, to a medical and psychiatric

> examination at the expense of the United States Government;
>
> (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
>
> (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

Id. at § 1231(a)(3).

48. The removal period may be extended beyond 90 days and the noncitizen may remain detained if the noncitizen frustrates his or her removal. *Id.* at § 1231(a)(1)(C).

49. Alternatively, the noncitizen may be detained beyond the 90 days if he is inadmissible under § 1182 or removable under various sections of § 1227, or determined to be a risk to the community or unlikely to comply with the order of removal. *Id.* at § 1231(a)(6); 8 C.F.R. § 241.4(a).

ZADVYDAS SAFEGUARDS AGAINST UNCONSTITUTIONALLY PROLONGED DETENTION

50. *Zadvydas v. Davis* is the landmark Supreme Court case on post-removal detention under 8 U.S.C. § 1231. In that case, the Supreme Court ruled that 8 U.S.C. § 1231 provides a "presumptively reasonable period of detention" of six months to effect a noncitizen's deportation. *Zadvydas*, 533 U.S. at 701.

51. Importantly, while *Zadvydas* has been read to permit 180 days of detention under § 1231 and any additional "period reasonably necessary to bring about that alien's removal from the United States," *id.* at 689–90, it does not permit the Government to arbitrarily detain a person subject to § 1231 whenever it can, simply because it can. Such

detention under this section is permissible only with the intent and ability to actually execute a noncitizen's removal.

52. After the expiration of the 180-day period of presumptively reasonable detention, and "once [Petitioner] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. Thus, after six months of detention, the burden of proof in a habeas proceeding is placed on the Government to justify continued detention.

53. And "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

ICE'S EFFORTS TO REMOVE CUBAN NATIONALS

54. Because the Cuban government limits the number of repatriations it accepts, ICE often seeks to remove Cuban nationals to third countries.

55. In a habeas proceeding for another Cuban national, ICE represented to a Court of this District that "the Government of Mexico was accepting some Cuban citizens through third-country removal procedures on a case-by-case basis." R. & R., *Luis S.R. v. Immigr. & Customs Enf't*, No. 26-CV-1482 (JWB/ECW), slip op. at 3 (D. Minn. Mar. 26, 2026). Per the sworn declaration of an ICE deportation officer,

> the process for presenting Cubans and other third-country nationals to Mexico is handled by the removal coordination units at respective ERO offices in Texas, New Mexico, Arizona, and California. Mexico has not previously denied or accepted [Petitioner] and the presentation to Mexican immigration is handled by the border facility. To the best of my knowledge, travel documents are not required and no

> diplomatic assurances or other acceptance materials have been sought or obtained in advance, as this process is mediated by the border ERO offices at or near the time of presentation.

Id. at 5–6 (alteration in original) (quoting docket number 17 at ¶¶ 7, 11).

56. In numerous cases within this District and around the Country, Respondents have claimed to have a third-country removal arrangement with Mexico. To date, they have always claimed, without providing any evidence besides testimony, that this agreement is unwritten. But these unsupported assertions raise more questions than they answer.

57. For the sake of brevity, Petitioner suggests the analysis in *Navarro v. Lyons*, No. 26-CV-10876 (WGY), 2026 WL 816791 (D. Mass. Mar. 25, 2026). In *Navarro*, the Government claimed that "Mexico has a standing (unwritten) agreement with the United States to accept Cuban Nationals for removal and that no travel document is necessary." *Id.* at *2. That court expressed due skepticism and suggested that, if the Government wished to press that as a valid basis for detention, a far greater inquiry would be necessary. *Id.* at *2–3.

58. Similarly, if the Court finds that potential removal to Mexico bears on this case, Petitioner requests that an evidentiary hearing be held to build a fuller record on this "unwritten agreement."

59. Despite ICE's efforts, it appears that Mexico refuses to accept many Cuban nationals. And, if Mexico does not accept them, it does not appear ICE has ample third countries wiling to do so. For example, in two separate habeas proceedings in this District, courts ordered the release of petitioners detained for 11 months apiece who had been turned down by Mexico. *See Alian C.-L. v. Mullin*, No. 26-CV-2335 (LMP/ECW), 2026 WL

1266167, at *1 (D. Minn. May 8, 2026); *Luis S.R. v. Mullin*, No. 26-CV-2642 (NEB/DJF), 2026 WL 1790914, at *1 (D. Minn. June 4, 2026), *R. & R. adopted*, 2026 WL 1788970 (D. Minn. June 22, 2026).

60. And in any case, before removing Petitioner to any third country they must provide him with "with effective notice of DHS's intention to remove them to a specified third country" and provide "a meaningful opportunity to contest removal to that third country on the ground that [he has] a reasonable fear of being persecuted or tortured there." *D.V.D.*, 2026 WL 2797801, at 1. To date, Respondents have not initiated such a process.

RELEASE IS THE PROPER REMEDY

61. "Habeas is at its core a remedy for unlawful executive detention. The typical remedy is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citations omitted).

62. Regarding 8 U.S.C. § 1231, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable" and order Petitioner's release. *Zadvydas*, 533 U.S. at 699. That "release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Id.* at 700.

63. The remedy for a violation of Petitioner's due process rights is immediate release. *See Pedro Eduardo R. P. v Bondi,* No. 26-CV-01323, 2026 WL 473140 (D. Minn. Feb. 17, 2026) (recommending immediate release after the government failed to contest the petitioner's Fourth and Fifth Amendment arguments), *R. & R. adopted*, 2026 WL 478607 (Feb. 19, 2026); *Jose L.R.O. v. Bondi*, No. 26-CA-850, slip op. at 25 (W.D. Tex. Mar. 23, 2026) ("[W]here the Court finds an ongoing detention unlawful, 'the typical

remedy for such detention is, of course, release.'" (quoting *Munaf*, 553 U.S. at 693)).

64. Immigration detention is civil in nature and, as a result, Congress must have expressly authorized it by statute and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, and there is no indication that Petitioner's detention was based on any facts that might indicate that Petitioner should be in custody. Due Process requires that Petitioner be able to engage in substantive immigration proceedings while released from custody rather than from a jail cell, potentially in some far flung corner of the country far from his family and counsel.

CAUSES OF ACTION

COUNT ONE: VIOLATION OF 8 U.S.C. § 1231

65. Petitioner re-alleges and incorporates by reference the paragraphs above.

66. 8 U.S.C. § 1231 authorizes the detention of noncitizens in order to execute a final order of removal, so long as removal is likely to occur in the reasonably foreseeable future.

67. Petitioner has a final order of removal to Cuba.

68. Petitioner has served over 180 days of consecutive immigration detention.

69. Petitioner remains present in the United States as of the date of this Petition.

70. To date, Respondents have proven incapable of removing Petitioner to Cuba and Mexico, and have not taken any steps or made any efforts to execute the removal order to any other country. Respondents have not indicated that there is a specific plan in place to remove Petitioner or that Cuba or any other country will accept Petitioner, and the ability

to carry out his removal is currently only speculative.

71. Respondents are incapable of removing Petitioner to Cuba or any other country.

72. Therefore, 8 U.S.C. § 1231 does not authorize further detention of Petitioner as he was not detained in order to execute his removal and his removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

COUNT TWO: FIFTH AMENDMENT PROCEDURAL DUE PROCESS

73. Petitioner re-alleges and incorporates by reference the paragraphs above.

74. *Mathews v. Eldridge* instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. 424 U.S. 319, 335 (1976). All three factors favor Petitioner.

75. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

76. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. Petitioner remains detained over six months after he was arrested with zero sign that Respondents can or will remove him. Meanwhile, there are highly valuable procedural safeguards available to Respondents:

Petitioner's release on an order of supervision under 8 C.F.R. § 241.13. Orders of supervision require individuals with final removal orders to regularly check in with ICE and to aid in their removal at ICE's behest by applying for travel documents and interfacing with foreign officials. *See* 8 U.SC. § 1231(a)(3)

77. The third factor, the government's interest, also favors Petitioner. The government has no legitimate interest in indefinitely detaining an individual who cannot be deported at this time.

78. For these reasons, arresting and detaining Petitioner violated procedural due process under the Fifth Amendment to the U.S. Constitution.

REQUEST FOR ORDER TO SHOW CAUSE

79. Within three days, unless good cause is shown, a "judge entering a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

80. Petitioner respectfully requests that the Court issue an Order to Show Cause directing Respondents to file a return within three days of the Court's order, showing cause, if any, why a writ of habeas corpus should not be granted.

81. Petitioner respectfully requests that an Order to Show Cause direct Respondents, should they offer any documents in this case, to provide sufficient details to establish the validity of those documents, such as: (1) the name, title, training, and qualifications of any officer who issued and/or served the document; (2) the time and place at which the document was issued and/or served; (3) the evidence the issuing officer relied

upon in making any such determination or finding in documents concerning ICE's efforts to remove Petitioner, and (4) whether any such document was created specifically in response to or in anticipation of this habeas petition.

82. Specifically, Petitioner requests that the Court order Respondents to produce evidence in **completely unredacted** form. In habeas cases in this District, Respondents continually produce evidence with key information redacted—without explanation, justification, or permission by the Court or rule of law—which deprives petitioners of their ability to conduct fact investigations and prepare certain evidence. Respondents are free to seek Petitioner's consent to file redacted documents, or seek leave of the Court to do so, but the Court should not accept as valid any evidence which is manipulated or redacted without prior permission.

REQUEST FOR EVIDENTIARY HEARING

83. An evidentiary hearing is appropriate when material facts are in dispute. *Ruiz v. Norris*, 71 F.3d 1404, 1406 (8th Cir. 1995). However, an evidentiary hearing is not required when a conclusion can be reached on the issue pursuant to undisputed facts. *United States v. Winters*, 411 F.3d 967, 973 (8th Cir. 2005).

84. Petitioner anticipates that Respondents may contest various facts concerning the likelihood of Petitioner's removal, including but not limited to Respondents ability to remove Petitioner to Cuba, Mexico, a third country, and ICE's efforts to pursue such removal. These issues could be dispositive. If the Court finds that material facts are in dispute, and it does not order his release based on undisputed facts, then Petitioner respectfully requests an evidentiary hearing so that sworn testimony may be taken from

him and the relevant ICE officers and officials to determine the truth of these issues.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause as to why Petitioner should not be released immediately on his prior order of supervision;

3. Declare that Petitioner's current detention exceeded Respondents' authority and is unlawful;

4. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on an order of supervision with conditions reasonable and appropriate to Petitioner's case;

5. Require that Petitioner be released within the State of Minnesota, at a safe time and place communicated to counsel and with all of Petitioner's personal belongings and effects in Respondents' possession, such as Petitioner's driver's license, immigration papers, identification documents including any passport or employment authorization document, cell phone, and keys;

6. Retain jurisdiction over this matter to decide any future motion for an award of reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), Local Rule 54.3(a), or any other basis justified by law, upon such application; and

7. Grant any and all further relief this Court deems just and proper.

DATED: September 29, 2026

Respectfully submitted,

/s/ Daniel P. Suitor
Daniel P. Suitor (#0403979)
Attorney at Law
331 Second Avenue S
Ste. 400-3099
Minneapolis, MN 55401
(612) 234-2149
dan@danielsuitor.com

Attorney for Petitioner