

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

REINALDO MORENO-RODRIGUEZ,

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Petitioner,

v.

WARDEN, in his or her capacity as Warden
of the ERO El Paso Camp East Montana
Detention Center;

MARY DE ANDA-YBARRA, in her official
capacity as Field Office Director of
Enforcement and Removal Operations, El
Paso Field Office, Immigration and Customs
Enforcement;

PAMELA JO BONDI, in her official
capacity as U.S. Attorney General;

TODD M. LYONS, in his official capacity as
Acting Director, Immigration and Customs
Enforcement; and

MARKWAYNE MULLIN, Secretary of the
U.S. Department of Homeland Security;

Respondents.

No. 26-CV-00084-DCG

**AMENDED
PETITION FOR
WRIT OF HABEAS
CORPUS AND
ORDER TO SHOW
CAUSE WITHIN
THREE DAYS**

1. Petitioner Reinaldo Moreno-Rodriguez (“Mr. Moreno-Rodriguez”) hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering his immediate release from the unlawful custody of the Department of Homeland Security, United States Immigration and Customs Enforcement (“ICE”).

2. This case presents an egregious violation of statutory and constitutional limits on immigration detention that threatens the liberty of all individuals subject to immigration enforcement. Mr. Moreno-Rodriguez’s removal order became administratively final in 2011 — nearly fifteen years ago. *See* ECF 3 and 3-1, Exhibit A. The 90-day “removal period” mandated by 8 U.S.C. § 1231(a)(1) expired long ago. The six-month presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), expired in 2011.

3. Despite these clear temporal limitations, ICE arrested and detained Mr. Moreno-Rodriguez on June 25, 2025, claiming authority that expired fourteen (14) years earlier. The government’s position—that it can warehouse detention authority indefinitely and deploy it at will decades later—would eviscerate the statutory scheme Congress created and render meaningless the Supreme Court’s constitutional safeguards against indefinite detention.

JURISDICTION

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and Article I, Section 9, Clause 2 of the U.S. Constitution. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

VENUE

5. Venue is proper in this Court as Mr. Moreno-Rodriguez is currently detained at the ERO El Paso Camp East Montana Detention Center in El Paso, Texas, which is within this judicial district. *See* ECF 1-2, Exhibit B, ICE Detainee Locator Results.

PARTIES

6. Petitioner Moreno-Rodriguez is citizen of Cuba currently in ICE custody at the ERO El Paso Camp East Montana Detention Center. *Id.* He has a removal order that became final on June 27, 2011. *See* ECF 3, page 1.

7. Respondent Warden is the warden of the ERO El Paso Camp East Montana Detention Center, in El Paso, Texas. He or she is the physical custodian of Petitioner and is sued in his or her official capacity only.

8. Respondent Mary de Anda-Ybarra is the Field Office Director for ICE's Enforcement and Removal Operations ICE Field Office in El Paso, Texas. She is one of Petitioner's legal custodians and is sued in her official capacity only.

9. Respondent Pamela Jo Bondi is the Attorney General of the United States, charged with enforcement of the laws of the United States. She is sued in her official capacity only.

10. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement, charged with the overall administration and operation of ICE, including oversight of enforcement and removal operations, detention policies, and implementation of immigration enforcement priorities nationwide. He is sued in his official capacity only.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security, whose responsibilities include administering and enforcing immigration laws pursuant to 8 U.S.C. §§ 1103(a)(1)-(3). He is sued in his official capacity only.

FACTUAL AND PROCEDURAL BACKGROUND

12. Mr. Moreno-Rodriguez has a removal order from a U.S. immigration judge that became final on June 27, 2011. *See* ECF 3 and 3-1.

13. On June 25, 2025, Respondents detained Mr. Moreno-Rodriguez. *See* ECF 3, page 2.

14. Since June 27, 2011, Respondents have not effectuated Mr. Moreno-Rodriguez's removal from the U.S. *Id.*

The Statutory Removal Period Expired Almost Fifteen Years Ago

15. Under 8 U.S.C. § 1231(a)(1)(B)(i), the government's 90-day removal period began on June 27, 2011, when Mr. Moreno-Rodriguez's order became administratively final. This period expired in 2011, almost fifteen years ago. *See* ECF 3, pages 1-2.

16. During this 90-day period, the statute mandates that "the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2). However, once this period expires without successful removal, the statute's command is equally clear: "the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added).

17. The word "shall" creates a mandatory obligation, not a discretionary choice. Once the removal period expired without Mr. Moreno-Rodriguez's removal from the U.S., ICE lost its general detention authority, and Mr. Moreno-Rodriguez was entitled to supervised release as a matter of law.

LEGAL ARGUMENT

COUNT I: VIOLATION OF 8 U.S.C. § 1231 - DETENTION BEYOND STATUTORY AUTHORITY

18. The Immigration and Nationality Act created a carefully structured detention scheme with mandatory temporal boundaries that ICE has flagrantly violated in detaining Mr. Moreno-Rodriguez.

A. The Plain Language of Section 1231 Prohibits Mr. Moreno-Rodriguez's Current Detention

19. Under 8 U.S.C. § 1231(a)(1)(B)(i), when a removal order becomes administratively final, a 90-day "removal period" begins. The statute's command during this period is unequivocal: "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2) (emphasis added). The word "during" temporally limits mandatory detention to this specific 90-day window.

20. When the removal period expires without successful removal, the statute dictates a mandatory result: "[I]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added). Congress chose the mandatory "shall" rather than the permissive "may," leaving no discretion for continued detention absent specific statutory authorization.

21. The Supreme Court has consistently recognized that "shall" creates mandatory obligations. In *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018), the Court emphasized that "the word 'shall' usually connotes a requirement" as opposed to discretion. This mandatory language forecloses any attempt by ICE to create detention authority where none exists.

22. Mr. Moreno-Rodriguez's 90-day removal period expired in 2011. For the past fourteen plus (14+) years, he has been entitled to supervision, not detention, as a matter of statutory law.

B. ICE Cannot Manipulate Statutory Time Limits Through Strategic Delay

23. The government cannot circumvent these temporal limitations by waiting decades to arrest someone whose removal period has long expired. Federal courts have rejected such manipulation. As the Southern District of New York held in *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009), when addressing ICE's attempt to "arbitrarily trigger the removal period" by delaying arrest: ICE cannot manipulate statutory timelines to manufacture detention authority that has expired.

24. Similarly, in *Ulysse v. Department of Homeland Security*, 291 F. Supp. 2d 1318, 1325 (M.D. Fla. 2003), the court rejected ICE's argument that the removal period begins upon arrest rather than when the order becomes final, finding "no indication in the statute or regulations" supporting this position and

recognizing that accepting it would grant the agency unlimited discretion to extend detention indefinitely through strategic delays.

25. Accepting the government's implied position—that it can detain Mr. Moreno-Rodriguez almost fifteen (15) years after the removal period expired—would create a regime of shadow detention authority. ICE could maintain lists of individuals with decades-old removal orders and strategically detain them whenever politically expedient or when seeking to bolster removal statistics, regardless of whether removal is actually possible.

**COUNT II: VIOLATION OF DUE PROCESS
UNDER THE FIFTH AMENDMENT
AND *ZADVYDAS* v. *DAVIS***

26. Even if this Court were to find some residual detention authority under Section 1231(a)(6) - which Petitioner disputes - Mr. Moreno-Rodriguez's detention violates the constitutional limits established by the Supreme Court in *Zadvydas* v. *Davis*, 533 U.S. 678 (2001).

**A. Petitioner's Continued Detention Violates Fifth Amendment and
*Zadvydas***

27. Petitioner's removal order became almost fifteen years ago. *See* ECF 3, pages 1-2. He has now been detained almost nine (9) months without removal, without any showing that removal is realistically foreseeable, and without any individualized determination that detention is necessary to prevent flight or danger.

28. Under 8 U.S.C. § 1231(a), detention is mandatory only during the 90-day “removal period” following a final order of removal. After that period, continued detention is governed by § 1231(a)(6), which the Supreme Court has held permits detention only for a period “reasonably necessary to secure the alien’s removal.” *Zadvydas*, 533 U.S. at 689. To avoid serious constitutional concerns, the Court imposed a six-month presumptively reasonable limit on post-order detention, after which the noncitizen must be released unless the government can show a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 699–701.

29. Respondents have not identified any travel documents, scheduled flights, diplomatic assurances, or other concrete evidence that removal is likely to occur. The mere fact that ICE may have initiated communications with a foreign consulate does not establish foreseeability. *Zadvydas* requires a realistic prospect of removal, not speculative hope that a foreign government may someday act. *Id.* at 699.

30. Petitioner’s case is even more constitutionally problematic because his removal order is almost fifteen (15) years old and ICE previously allowed him to live in the community without detention. His re-arrest confirms that detention is not being used to effectuate imminent removal, but instead as a coercive and punitive measure. Such detention bears no reasonable relationship to the only legitimate

purposes recognized by the Supreme Court: ensuring presence at removal and protecting the public. *Zadvydas*, 533 U.S. at 690.

31. The Fifth Amendment does not permit the government to imprison a person indefinitely based on a long-expired removal order where removal is not practically attainable. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute” and violates due process. *Id.* at 699. That is precisely the case here.

32. Because Respondents have presumptively exceeded the six-month period and because Respondents cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future, Petitioner’s continued incarceration is unlawful. The Constitution requires that he be released under appropriate conditions of supervision.

B. The Six-Month Presumptively Reasonable Period Expired Almost Fifteen Years Ago

33. In *Zadvydas*, the Supreme Court held that detention beyond six months after the removal period expires is presumptively unreasonable unless the government demonstrates removal is reasonably foreseeable. The Court established this bright-line rule to avoid the serious constitutional problems raised by indefinite civil detention.

34. Critically, this six-month period begins when the 90-day removal period expires, not when ICE chooses to effectuate physical detention. The

statutory framework and constitutional analysis are tied to fixed temporal markers, not the government's discretionary enforcement decisions.

35. As the *Farez-Espinoza* court explicitly held: "the six-month period of detention authorized by statute and reviewed by *Zadvydas* commences on the date the order of removal becomes final, not the date of detention." 600 F. Supp. 2d at 500. This interpretation prevents ICE from circumventing constitutional protections through strategic delays.

36. Mr. Moreno-Rodriguez's six-month presumptively reasonable period began on June 17, 2011 (when the 90-day removal period expired) and ended later in 2011 — almost fifteen (15) years ago. *See* ECF 3, pages 1-2. Every day of Mr. Moreno-Rodriguez's current detention violates the constitutional framework established by *Zadvydas*.

C. The Government Cannot Meet Its Burden of Demonstrating Reasonable Foreseeability

37. After the six-month period expires, the government bears the burden of demonstrating by clear and convincing evidence that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. The government cannot possibly meet this burden when:

- a. Almost fifteen years have passed without removal. The sheer passage of time creates an overwhelming presumption that removal is not

reasonably foreseeable. If removal were possible, it would have occurred during the nearly fifteen years since the order became final.

38. The government cannot rely on speculation or hope that someday, somehow, a country will accept Mr. Moreno-Rodriguez's transfer. *Zadvydas* requires concrete evidence that removal is reasonably foreseeable in the immediate future, not theoretical possibility at some indefinite point.

D. The Government's Position Would Eviscerate Constitutional Protections

39. If the government can restart the six-month clock whenever it chooses to detain someone, then *Zadvydas*'s protections become meaningless. Under this theory, ICE could release someone for decades, then re-detain them and claim a fresh six-month period of presumptively reasonable detention. This would mean someone whose removal order became final in 1970 could be detained today with the same constitutional justification as someone whose order became final yesterday.

40. Such an interpretation defies both logic and law. The Supreme Court's concern in *Zadvydas* was preventing indefinite civil detention, which it characterized as raising serious constitutional problems. The Court emphasized that detention becomes increasingly difficult to justify as time passes without removal. If ICE could reset the constitutional clock at will by strategically delaying

detention, it would create precisely the indefinite detention problem *Zadvydas* sought to prevent.

**COUNT III: ABSENCE OF ANY LEGITIMATE
GOVERNMENT INTEREST IN DETENTION**

41. The Fifth Amendment prohibits deprivation of liberty without due process of law. This protection extends to all persons within United States territory, including aliens subject to removal orders. *Zadvydas*, 533 U.S. at 693. In the civil detention context, the government must demonstrate a special justification that outweighs the individual's fundamental liberty interest.

A. Mr. Moreno-Rodriguez Poses No Flight Risk

42. The government cannot credibly claim Mr. Moreno-Rodriguez poses a flight risk when they have:

- Resided continuously in the United States since 1994;
- Maintained employment and paid taxes; and
- Never attempted to evade immigration authorities.

43. Persons with such deep roots in the community, facing no reasonable prospect of removal, have every incentive to remain and pursue available legal remedies rather than flee.

B. Removal Is Not Reasonably Foreseeable

44. As detailed above, removal to Cuba is not reasonably foreseeable after almost fifteen (15) years of demonstrated impossibility. Detention cannot be justified to facilitate a removal that will never occur.

45. The government's detention of Mr. Moreno-Rodriguez serves no legitimate purpose and violates both procedural and substantive due process. As the Supreme Court recognized in *Zadvydas*, detention's justification is "weak or nonexistent where removal seems a remote possibility at best." 533 U.S. at 690. After twenty years, removal is not merely remote—it is impossible.

IRREPARABLE HARM AND NEED FOR EMERGENCY RELIEF

46. Every day of unlawful detention constitutes irreparable injury to Mr. Moreno-Rodriguez's fundamental liberty interests that cannot be adequately compensated through monetary damages. *Zadvydas*, 533 U.S. at 690 ("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 protects").

47. The harm is particularly acute given Mr. Moreno-Rodriguez's age and the psychological trauma of indefinite detention after building a life in America for more than thirty (30) years.

48. The balance of hardships overwhelming favors Mr. Moreno-Rodriguez, as Respondents suffer no cognizable harm from complying with federal law and releasing someone who poses no flight risk and cannot be removed.

49. The public interest strongly favors enforcing statutory limits and constitutional protections. Permitting ICE to circumvent temporal limitations and detain people decades after removal periods expire undermines the rule of law and threatens the liberty of countless individuals with old removal orders.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Issue a Writ of Habeas Corpus ordering Respondents to immediately release him from custody;

B. Declare that his detention violates:

- 8 U.S.C. § 1231's temporal limitations;
- The Due Process Clause of the Fifth Amendment;
- The Supreme Court's holding in *Zadvydas v. Davis*; and
- ICE's own regulations at 8 C.F.R. § 241.4.

C. Enter a permanent injunction prohibiting Respondents from re-detaining him absent clear and convincing evidence that removal to Cuba has become imminently feasible;

- D. In the alternative, order an immediate bond hearing at which the government bears the burden of proving by clear and convincing evidence that he poses a flight risk or danger that cannot be mitigated by conditions of release;
- E. Retain jurisdiction to ensure compliance with this Court's orders;
- F. Grant such other and further relief as this Court deems just and proper.

Dated: March 24, 2026

Respectfully submitted,

/s/Brian Scott Green

Brian Scott Green

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VERIFICATION

I, Brian Scott Green, counsel for Reinaldo Moreno-Rodriguez, hereby verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner and her family.

Dated: March 24, 2026

/s/Brian Scott Green
Brian Scott Green